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No. 82-1968

IN THE

Supreme Court of the United States

October Term, 1982

ARKLA, INC. (formerly ARKANSAS LOUISIANA GAS COMPANY), *Petitioner*,

v.

FRANK J. HALL, W.E. HALL, JR., MRS. W.E. HALL, SR., THE H.M. HARRELL TESTAMENTARY TRUST, JAMES E. HARRELL, JOHN K. HARRELL, SR., ASA BENTON ALLEN, SIDNEY G. MYERS, JR., W.O. COCHRAN, THOMAS F. PHELPS, MRS. ELAINE ALLEN, JAMES A. NOE, D.B. MCCONNELL, MRS. EVA L. WEISS, SOL KAPLAN AND NATIONAL AMERICAN BANK, NEW ORLEANS, CO-TESTAMENTARY EXECUTORS OF THE SUCCESSION OF SEYMOUR WEISS, FEDERAL ENERGY REGULATORY COMMISSION, *Respondents*.

BRIEF FOR RESPONDENTS IN OPPOSITION TO ARKLA, INC.'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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ISSUES PRESENTED

1.

Does the *evidence* as contained in the 2,000 page administrative record for this individual case and the well established legal *definitions* and *standards* for *"good cause"* as consistently adhered to and applied by the F.P.C., the F.E.R.C. and the reviewing Federal Courts of Appeals in *all* of the other applicable *"good cause"* for *"waiver"* cases support the Fifth Circuit of Appeals' determination that the Hall group has in this case shown *"a good and valid legal excuse"*, *"a good and sufficient legal reason"*, and *"good cause"* for their absolute *"inability"* to timely comply with the prospective Section 4(d) notice requirement with respect to their definitively confirmed and contractually authorized prices as prospectively agreed upon and provided for in their legitimate 1952 supply contract with Arkla, Inc.?

2.

Did the Fifth Circuit Court of Appeals below consistent with *all* of the other applicable *"good cause"* for *"waiver"* cases properly *remand* this case to the F.E.R.C. in order to again have the Hall group's definitively confirmed and contractually authorized prices *"filed"* with the F.E.R.C. and again have the F.E.R.C. exercise its *"exclusive"* Section 4(d) *"review function"* and, hence, again make a definitive determination as to whether the Hall group's *"filed"*, severable and contractually authorized prices of 11.7432¢ to 14.0508¢ per Mcf for their residue natural gas were *below* the Commission's established and approved *"just and reasonable"* area rate ceilings?

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BRIEF FOR RESPONDENTS IN OPPOSITION TO ARKLA, INC.'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE CHIEF JUSTICE AND ASSSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

I.

PRELIMINARY STATEMENT

As expressly confirmed by this Court on July 2, 1981 in *Arkansas Louisiana Gas Company v. Hall*, 453 U.S. 571 (1981):

> "... *[the Commission] may 'for good cause shown,'* 15 USC §717c(d) [15 USCS§717c(d)], *waive the usual requirement of timely filing of an alteration in a rate. . .*
>
> *[rates for] natural gas are lawful only if they are 'just and reasonable' . . . . The authority to decide whether the rates are reasonable is vested by Section 4 of the Act solely in the Commission. . .*
>
> *[u] nder the filed rate doctrine, the Commission alone is empowered to make that judgment, and until it has done so, no rate other than the one on file may be charged*" (Emphasis added)

A careful reading and analysis of each one of the scores of applicable "*good cause*" for "*waiver*" cases [1] will confirm that the adminstrative "*waiver*" relief as granted to the 15 individual Respondents herein, Frank J. Hall, et al ("Hall"), by the United States court of Appeals For the Fifth Circuit below based upon

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[1] See: Plaquemines Oil & Gas Co. v. FPC, 450 F.2d 1334 (D.C. Cir. 1971); *Highland Resources, Inc. v. F.P.C.*, 537 F.2d 1336 (5th Cir. 1976); *The City of Piqua, Ohio v. F.E.R.C.*, 610 F.2d 950 (D.C. Cir. 1979); *Dayton Power & Light Co.*, F.E.R.C. Docket No. ER77-546, "Order" issued on January 18, 1978; *Central Maine Power Co. v. F.P.C.*, 345 F.2d 873 (1st Cir. 1965); *Niagara Mohawk Power Corp. v. F.P.C.*, 379 F.2d 153 (D.C. Cir. 1967); *Moss v. C.A.B.*, 521 F.2d 298 (D.C.Cir. 1976); *Southern Railway Co. v. United States*, 412 F.Supp. 1122 (Dist.Ct. for D.C. 1976); *Duke Power Company*, F.P.C. Docket No. E-7513, "Order" of February 9, 1970; *New England Power Company*, F.P.C. Docket No. E-7729, "Order" of May 19, 1972; *Boston Edison Co.*, 50 F.P.C. 537 (1973); *Arizona Public Service Co.*, F.P.C. Docket Nos. E-9280, E-9281, E-9282 and E-9283, "Order" of March 21, 1975; *Arizona Public Service Co.*, F.P.C. Docket No. ER77-188, "Letter Order" of April 8, 1977; *Electric Energy, Inc.*, F.P.C. Docket No. ER77-176, "Letter Order" of April 11, 1977; *Potomac Electric Power Co.*, F.E.R.C. Docket No. ER77-429, "Order" of June 30, 1977; *Oklahoma Gas & Electric Co.*, F.E.R.C. Docket No. ER78-423, "Order" of June 30, 1978; *Arizona Public Service Co.*, F.E.R.C. Docket Nos. ER78-429 and ER78-430, "Order" of July 13, 1978; *Consumers Power Co.*, F.E.R.C. Docket No. 78-432, "Order" of July 21, 1978; *Northern States Power Co. of Minnesota*, F.E.R.C. Docket Nos. ER77-593, ER77-596, ER77-633, ER77-634, ER78-38, "Order" of December 2, 1977; *New England Power Company*, F.E.R.C. Docket No. ER78-44, "Order" of December 9, 1977; *Iowa Power & Light Company*, F.P.C. Rate Schedule No. 33, "Letter Order" of 1968; *Consumers Power Company*, F.P.C. Rate Schedule No. 15, "Letter Order" of September 4, 1969; *Southern California Edison Company*, "Letter Order" of 1969; *Jupiter Corporation, et al*, F.P.C.

(continued on page 3)

the *evidence* contained in the 2,000 page record for this case[2] is the *same* administrative "*waiver*" relief that the Federal Power Commission ("F.P.C."), the Federal Energy Regulatory Commission ("F.E.R.C.") and the Federal courts of Appeals have consistently and properly granted to Plaquemines Oil and Gas Company, Highland Resources, Inc., Dayton Power and Light Company, Amoco Production Company, Arco Oil and Gas Company, Cities Service Company, Phillips Petroleum Company, Gulf Oil Corporation, Chevron U.S.A., Inc., Conoco, Inc., Champlin Petroleum Company, Mesa Petroleum Company, Marathon Oil Company, Mobil Oil Corporation, Trans-Ocean Oil, Inc. and scores of other citizens in the form of administrative "*waivers*" of the identical prospective notice filing requirements of Section 4(d) of the Natural Gas Act (NGA) and Section 205(d) of the Federal Power Act (FPA) in order to avoid obvious injustices and to properly honor, protect and preserve the "*true intentions*" and "*integrity*" of hundreds of legitimate natural gas and electric supply contracts which provided for contractually authorized prices that were *below* the Commission's established and approved "*just and reasonable*" area rate ceilings.

As heretofore consistently confirmed by the F.P.C., the F.E.R.C. and the Federal Courts of Appeals in scores of applicable "*good cause*" for "*waiver*" cases [3], Congress in enacting the indentical prospective notice filing requirements of Section 4(d) of the NGA and Section 205(d) of the FPA properly

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(footnote 1, continued)
Docket No. RI63-212, "Order" of May 13, 1970 and "Order" of July 7, 1970; *Kansas City Power & Light Co.*, F.E.R.C. Docket No. ER78-25, "Order" of November 17, 1977; *Utah Power & Light Co.*, F.E.R.C. Docket No. ER78-216, "Order" of June 20, 1978; *Marathon Oil Company*, F.P.C Docket No. RI70-102, "Order" of August 1, 1969; *Amoco Production Company, et al.* Rate Schedule No. 818, "Order" of July 9, 1980; *American Natural Gas Production Company, et al.* F.E.R.C. Rate Schedule No. 51, "Order" of December 18, 1980.

[2]See: *Frank J. Hall, et al v. F.E.R.C.*, 691 F.2d 1184 (5th Cir. 1982).

[3]See the "*good cause*" for "*waiver*" cases as cited in Footnote 1 on page 2 of this Brief.

recognized that the *"true intentions"* and *"integrity"* of legitimate supply contracts should *not* be arbitrarily abrogated and unjustly destroyed by a mechanical application of the prospective notice requirements and their corollary known as the "filed rate doctrine" *when* citizens could show *"good cause"* for their *"inability"* or *"failure"* to timely comply with these prospective notice requirements with respect to their contractually authorized prices that were *below* the Commission's established and approved *"just and reasonable"* area rate ceilings. Accordingly, as consistently confirmed by the F.P.C., the F.E.R.C. and the Federal Courts of Appeals in scores of applicable *"good cause"* for *"waiver"* cases[4], Congress in order to protect and preserve the *"true intentions"* and *"integrity"* of legitimate supply contracts statutorily authorized *"waiver"* of the identical Section 4(d) and Section 205(d) prospective notice filing requirements for *"good cause shown"* with respect to contractually authorized prices (but not *"timely"* filed prices) that were *below* the Commission's established and approved *"just and reasonable"* area rate ceilings.

While Congress did not statutorily redefine the terms *"good cause"* with respect to the *granting* of *"waivers"* of the identical Section 4(d) and Section 205(d) prospective notice filing requirements for contractually authorized prices, the legal *definitions* and *standards* for *"good cause"* were and are well established:

> *"Good Cause. Substantial reason, one that affords a legal excuse.* Pines v. District Court In and For Woodbury County, 233 Iowa 1284, 10 N.W. 2d 574, 580, 583. *Legally sufficient ground or reason.* Jackson v. U.S., C.C.A. Ariz., 295 F.620, 622; Lockwood v. Lockwood, 19 Ariz. 215, 168 P. 501, 502 . . .
>
> *'Good Cause' . . . . exists if delay was for good reason, or that there was justification or excuse for the delay.* Kisten v. Kisten, 229 Wis. 479, 282 N.W. 629, 632." (Em-

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[4]See the *"good cause"* for *"waiver"* cases as cited in Footnote 1 on page 2 of this Brief.

phasis added)

See: *Black's Law Dictionary*, 4th Edition (1951) at page 822. See, also: *Bidwell v. McSorley*, 72 S.E. 2d 245, 249, 194 Va. 201; *Home Sewing Machine Co. v. Floding*, 27 W.Va. 540; *State v. Estencion, Hawaii*, 625 P.2d 1040, 1042; *People v. Gillett, Colo.*, 629 P.2d 613, 618; *In re Corbett's Estate*, 279 N.W. 2d 89, 95, 203 Neb. 392; *People v. Bryant*, 85 Cal. Rptr. 388, 394, 5 C.A.3d 563; and *People v. D'Amato*, 211 N.Y.S.2d 877, 880, 12 A.D.2d 439.

By consistently applying and properly adhering to these *same* definitions and well established *standards* for *"good cause"* in *all* of their *"good cause"* for *"waiver"* cases[5], the F.P.C., the F.E.R.C. and the Federal courts of Appeals have consistent with Congress' legislative intent properly honored, protected and preserved the *"true intentions"* and *"integrity"* of hundreds of legitimate private supply contracts by consistently granting citizens of this Nation *"waivers"* of the identical prospective notice requirements of Section 4(d) of the NGA and Section 205(d) of the FPA with respect to their contractually authorized prices (but not *"timely"* filed prices) for residue natural gas and electricity that were *below* the Commission's established and approved *"just and reasonable"* area rate ceilings *when* the citizens have established and shown that they had *"a good and valid legal excuse"* or *"a good and sufficient legal reason"*, i.e. *"good cause"*, for their *"inability"* or *"failure"* to timely comply with the prospective Section 4(d) and Section 205(d) notice requirements. As again recently and correctly confirmed by the F.E.R.C. in its *"Original Brief"* filed with the United States court of Appeals for the District of Columbia Circuit on October 10, 1978 in *The City of Piqua, Ohio v. F.E.R.C.*, 610 F.2d 950 (D.C.Cir. 1979):

> *"Historically, the Commission has from its earliest days construed the virtually indentical notice provisions of the*

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[5]See the *"good cause"* for *"waiver"* cases as cited in Footnote 1 on page 2 of this Brief.

> *Federal Power Act and the Natural Gas Act as permitting an effective date for a rate or service charge that is prior to its filing date, for good cause shown. . .*
>
> *The provisions for waiver of advance notice, for good cause shown, allows flexibility in the administrative process and prevents inequities from resulting from minor or unavoidable procedural delays. . .*
>
> *. . . the Commission's construction of Section 205(d) reflects a longstanding practice of permitting waiver of the prior notice requirements for gas and electric rate or service charges for good cause shown. . .*
>
> *The Commission distinguished the cases on retroactive ratemaking cited by Piqua* (R.99-100) *and found that they were inapposite in the instant circumstances* (R.100).
>
> *. . . The Commission found that the intent of the parties and the delay caused by the resolution process constituted good cause to waive its prior notice requirements and make the Interconnection Agreement effective as negotiated by the parties* (R.102-103). . .
>
> *The Commission has, since its earliest days, consistently construed the Act as permitting the Commission, for good cause shown, to allow a rate change to become effective prior to the date it is accepted for filing.* (Emphasis added)

The recent and leading *"good cause"* for *"waiver"* decisions in *Plaquemines Oil and Gas Company v. F.P.C.*, 450 F.2d 1334 (D.C. Cir. 1971); *Highland Resources, Inc. v. F.P.C.*, 537 F.2d 1336 (5th Cir. 1976); *The City of Piqua, Ohio v. F.E.R.C.*, 610 F.2d 950 (D.C. Cir. 1979); *Dayton Power and Light Company*, F.E.R.C. Docket No. ER77-546, *"Waiver Order"* issued on January 18, 1978; *Amoco Production Company, et al.*, F.E.R.C. Rate Schedule No. 818, et al. *"Waiver Orders"* issued on July 9, 1980; and *American Natural Gas Production Company, et al.*, F.E.R.C. Rate Schedule No. 51, et al. *"Waiver Orders"* issued on December 18, 1980[6] involved consistent and

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[6]Pertinent excerpts from some of these recent and leading *"good cause"* for *"waiver"* decisions are reproduced for the Court's ready reference and convenience in an Appendix A to this Brief.

proper findings of "*good cause*" for the *granting* of "*waivers*" of the identical prospective Section 4(d) and Section 205(d) notice requirements to more than *80* citizens with respect to their contractually authorized prices (but not "*timely*" filed prices) for residue natural gas and electricity under more than *190* private supply contracts and fully evidence and confirm the F.P.C.'s, the F.E.R.C.'s and the Courts' "*longstanding practice of permitting waiver of the prior notice requirements for gas and electric rates*" under the NGA and FPA based upon a consistent application of and adherence to these *same* legal definitions and well established *standards* for "*good cause*".

As the Hall group will herein demonstrate, the United States Fifth Circuit court of Appeals below in accordance with fundamental principles of equal protection of the law, due process of law and equal justice under law properly applied these *same* legal definitions and well established *standards* for "*good cause*" for granting "*waivers*" of the identical prospective notice requirements to the *evidence* contained in the 2,000 page administrative record for this case and consistently found that the Hall group has shown "*a good and sufficient legal reason*", "*a good and valid legal excuse*" and "*good cause*" for a "*waiver*" of the prospective Section 4(d) notice requirement in this case with respect to their contractually and prospectively authorized prices due to the definitively confirmed "*true intentions*" and "*integrity*" of their legitimate 1952 supply contract with Arkla, Inc. ("Arkla") and the definitively confirmed fact that Arkla, the definitively confirmed contract violator, unilaterally through its *own* continued legal fault wrongfully rendered it absolutely and humanly "*impossible*" for the Hall group to timely prepare and to prospectively file the Section 4(d) notice forms with the F.P.C. from 1961 to 1972 by continuously "*breaching*", "*violating*" and "*abusing*" the Hall group's legitimate legal and contractual rights from September 1961 through December 1975 *and by uncooperatively failing to disclose and effectively withholding* all of the true, relevant and material facts concerning *its continued discrimination* and *breach of contract* from the Hall group for *14* years. Moreover, as the Hall group will also herein demonstrate, the Fifth Circuit court of Appeals

below consistent with *all* of the other *"good cause"* for *"waiver"* cases[7] and this Court's decision of July 2, 1981 in *Arkla v. Hall* properly and correctly *remanded* this case to the F.E.R.C. in order for the Hall group's definitively confirmed and contractually authorized prices under their legitimate 1952 supply contract with Arkla to be again *"filed"* with the F.E.R.C. and for the F.E.R.C. to again exercise its *"exclusive"* Section 4(d) *"review function"* and, hence, again have the F.E.R.C. definitively determine that the Hall group's *"filed"* and contractually authorized prices for their residue natural gas were *below* the Commission's established and approved *"just and reasonable"* area rate ceilings.

II.

STATEMENT OF THE CASE

In January 1952 the Hall group and Arkla negotiated and perfected a legitimate *"most favored nation"* gas supply contract pursuant to which Arkla contractually promised and legally guaranteed the Hall group that they would *not* be *discriminated* against by Arkla and that they would always receive from Arkla the highest prices on the *same "most favored nation"* basis that Arkla subsequently paid to anyone else for any natural gas, condensate and extracted liquid hydrocarbons produced for any well or wells situated in the Sligo Gas Field, Bossier Parish, Louisiana.

Under fundamental principles of law and basic justice[8], Arkla, like *all* other contractual obligors in this Nation, legally owed the Hall group *an affirmative duty* and *a continuing obligation* to *timely* and to *cooperatively* honor the *"true intentions"* and *"integrity"* of their 1952 *"most favored nation"* contract and to timely and cooperatively do *everything* necessary to assist the Hall group in effectuating and implementing their legitimate

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[7]See the *"good cause"* for *"waiver"* cases as cited in Footnote 1 on page 2 of this Brief.

[8]See: Articles 1901, 1903, 1930 and 2040 of the Louisiana Civil Code and the authorities cited in 17A C.J.S., Contracts, §328, Note 41, at pp. 286 and 287.

"most favored nation" rights under their 1952 contract. Specifically, Arkla from 1961 to 1972 legally owed the Hall group an affirmative duty and a continuing obligation *to timely* and *cooperatively assist* them in prospectively preparing and filing the Section 4(d) notice forms setting forth their severable and contractually authorized prices for their residue natural gas with the F.P.C.

However, unfortunately for the Hall group, Arkla unbeknown to them unilaterally decided in 1961: (i) to continuously *"breach"*, *"violate"* and *"abuse"* the *"true intentions"* and *"integrity"* of their 1952 *"most favored nation"* contract; (ii) to engage in blatent *discrimination* against the Hall group in terms of the higher prices and favored treatment granted by Arkla to the United States Government for its comparable gas, condensate and extracted liquid hydrocarbons produced from the *same* Sligo Gas Field and delivered into Arkla's *same* Sligo gas processing plant from 1961 to 1975; and (iii) to *uncooperatively fail to disclose* and effectively withhold all of the true facts concerning Arkla's *blatent discrimination* and *continued breach of contract* from the Hall group for *14* years. Specifically, the Hall group from September 1961 through December 1973 repeatedly inquired of Arkla's officers and officials as to whether Arkla was paying anyone else in the Sligo Field prices higher than those that they were receiving and on each occasion for *13* years Arkla's officers and officials inaccurately advised and incorrectly informed the Hall group that they were in fact receiving the highest prices that Arkla paid to anyone in the Sligo Field, *when in fact* Arkla pursuant to its contracts[9] with the United States Government was paying the United States Government substantially higher prices on much more favorable terms during this entire period of time.

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[9]See: Section 2(n) of Arkla's 1961 Protective Lease Contract with the United States Government and Arkla's November 15, 1962 Letter Contract with the United States Government, copies of which are reproduced for this Court's ready reference and convenience in an Appendix C to this Brief. See, also: *Louisiana Land & Exploration Co. v. F.P.C.*, 574 F.2d 204 (5th Cir. 1978).

In point of fact the Hall group believed and had no reason to doubt or question the accuracy of the representations as made by Arkla's officers and officials for *13* years *until* January, 1974 when Frank J. Hall, while having lunch at the Shreveport Petroleum Club, inadvertently overheard a conversation between two persons presumed to be officials of Arkla concerning the higher prices and much more favorable terms granted by Arkla to the United States Government for its royalty gas, condensate and extracted liquid hydrocarbons produced from the Sligo Gas Field. Due to the fact that Arkla still uncooperatively withheld and refused to disclose any of the true facts concerning its contracts with the United States Government, the Hall group was forced to retain legal counsel in order to discover and obtain the true facts concerning Arkla's contracts with the United States Government. Ultimately, the Hall group's undersigned counsel was finally able, pursuant to the *Freedom of Information Act*, to obtain from the United States Government true copies of Arkla's contracts with the United States Government pursuant to which Arkla had and was in fact paying higher prices to the United States Government for its comparable gas, condensate and extracted liquid hydrocarbons as produced from the *same* Sligo Gas Field during the *same* period of time.

After the Hall group fortuitously discovered and finally caught Arkla *"breaching"*, *"violating"* and *"abusing"* their legal and contractual rights in 1974[10], burdensome and protracted litigation between the Hall group and Arkla has for 9 years been conducted before the Louisiana Twenty-Sixth Judicial District court, the Louisiana First Judicial District court, the Louisiana Second Circuit court of Appeal, the Louisiana Supreme court, the United States District court for the Western District of Loui-

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[10]Some of Arkla's *own "Internal Memorandums"*, copies of which are reproduced in an Appendix D to this Brief, confirm that some of Arkla's *own* officers and officials were for good reason from the very beginning very concerned about the strong likelihood that Arkla's contractual agreements with the United States Government would *"breach"*, *"activate"* and *"trigger"* Arkla's legal and contractual obligations to the Hall group.

siana, the Federal Power Commission, the Federal Energy Regulatory Commission, the United States Supreme Court, the United States court of Appeals for the District of Columbia Circuit and the United States court of Appeals for the Fifth Circuit. With respect to the fundamental issue as to whether Arkla wrongfully injured and damaged the Hall group by continuously *"breaching"*, *"violating"* and *"abusing"* their legitimate legal and contractual rights from September 1961 through December 1975 and by uncooperatively and effectively withholding all of the true facts from the Hall group for *14* years, the Louisiana trial court, the Louisiana court of appeal, the Louisiana Supreme court and this Court and *all* 19 out of 19 judges and Justices who tried and reviewed this basic issue have *unanimously determined* and *definitively confirmed* that Arkla wrongfully injured and damaged the Hall group from 1961 through 1975 in the *same* uncooperative manner that the Kerr-McGee Corporation, Cities Service Gas Company and the Louisiana-Nevada Transit Company, as defaulting pipeline companies, also wrongfully injured and damaged other citizens of this Nation by simply *"breaching"*, *"violating"* and *"abusing"* similar private gas supply contracts. See: *Eastern Petroleum Co., et al v. Kerr-McGee Corp.*, 447 F.2d 569 (7th Cir. 1971); *Western Natural Gas Co. v. Cities Service Gas Co.*, 507 Pac.2d 1236 (Okla.S.Ct. 1972), appeal *dismissed* and certiorari *denied*, 409 U.S. 1052 (1972); *Cities Service Gas Co. v. F.P.C.*, 535 F.2d 1278 (D.C. 1976); and *Louisiana-Nevada Transit Co. v. Woods*, 393 F.Supp. 177 (W.D. Ark. 1975).

Notwithstanding the fact that this Court[11] unanimously (8 - 0) *"affirmed"* in all respects the Louisiana Supreme court's *unanimous* (7 - 0) *breach of contract determination* that Arkla had wrongfully injured and damaged the Hall group by continuously *"breaching"*, *"violating"* and *"abusing"* their legitimate legal and contractual rights from 1961 through 1975 and notwithstanding the fact that *all* of the similarly injured

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[11]*Arkansas Louisiana Gas Company v. Frank J. Hall, et al.* 453 U.S. 571 (1981).

and aggrieved citizens in *all* of the above cited cases justly received full compensation for their actual losses from their defaulting pipeline companies, this Court in a split decision (5 - 3) held that in order for the Hall group to legally obtain this *same* legal relief and basic justice from Arkla, as their defaulting contractual obligor, the Hall group would first have to remove the mechanical *"bar"* of the prospective Section 4(d) notice requirement and its corollary known as the *"filed rate doctrine"* by obtaining from the appropriate Federal Tribunals definitive determinations as to their legal entitlement to certain Federal administrative relief:

(a) The Hall group's definitively confirmed and contractually authorized prices as prospectively provided for and agreed to in their legitimate 1952 contract with Arkla must again be *"filed"* with the F.E.R.C. and the F.E.R.C. must again perform its *"exclusive"* Section 4(d) *"review function"* with respect to another definitive determination that the Hall group's *"filed"*, severable and contractually authorized prices for their residue natural gas were *below* the Commission's established and approved *"just and reasonable"* area rate ceilings[12];

(b) A definitive determination as to the Hall group's legal entitlement to an administrative *"waiver"* for *"good cause shown"* of the prospective Section 4(d) notice requirement for the period September 1961 to September 1972 during which Arkla's *own* definitively confirmed legal fault

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[12]Consistent with the Commission's decision in *Rowan v. Allied Chemical Corp.*, 39 F.P.C. 64 (1968) and a F.E.R.C. "Order" issued on April 25, 1979, the Hall group on May 2, 1979 previously *"filed"* their definitively confirmed, severable and contractually authorized prices for their residue gas, condensate and extracted liquid hydrocarbons for the entire 1961 to 1975 period with the F.E.R.C. for the F.E.R.C.'S *"exclusive review"*. After the Hall group *"filed"* their definitively confirmed, severable and contractually authorized prices with the F.E.R.C., the F.E.R.C. performed its *"exclusive"* Section 4(d) *"review function"* and by virtue of an "Order" issued on May 18, 1979 the F.E.R.C. correctly and definitively confirmed that:

> *"[t]he rates requested [by the Hall group] are within what the Commission has determined to be the zone of reasonableness."*

See: *Arkansas Louisiana Gas Company v. Frank J. Hall, et al.* F.E.R.C. Docket No. RI76-28. See also: *Murphy Oil Corporation v. F.P.C.*, 431 F.2d 805 (8th Cir. 1970).

and continued breach of contract wrongfully rendered timely compliance absolutely and humanly "*impossible*" with respect to their agreed upon and contractually authorized prices; and

(c) A definitive determination as to the Hall group's legal entitlement to the administrative *status* of "*small producers*" for the entire period after October 1972.

As expressly noted and confirmed by this Court in its July 2, 1981 decision in *Arkla v. Hall*, the administrative "*waiver*" for "*good cause shown*" and the administrative *status* of "*small producers*" are the only legitimate *exceptions* to the prospective Section 4(d) notice requirement and its corollary known as the "*filed rate doctrine*", which Arkla had effectively "*prevented*" and absolutely "*precluded*" the Hall group from timely complying with, and that both of these Federal administrative *issues* were as of July 2, 1981 properly pending appellate review before an appropriate Federal court of Appeals. Although this Court inadvertently stated that the "*good cause*" for a "*waiver*" issue and the "*small producer*" issue were *both* properly pending appellate review before the United States court of Appeals for the District of Columbia Circuit, the F.E.R.C. correctly advised and promptly informed the District of Columbia Circuit that:

> "The Supreme Court, in *Arkansas Louisiana Gas Co. v. Hall*, No. 78-1789 (July 2, 1981), held that the 'filed rate doctrine' precluded collection of damages for the earlier period, *in the absence of a waiver*. . .
>
> Although the Supreme Court opinion, Slip op. at 4-6 n. 6, states that this Court has before it the Commission's decision to deny Hall a waiver of the notice requirement of Section 4(d) of the Natural Gas Act, *that question is before the Fifth Circuit and the Supreme Court has been so notified*.
>
> *As the Supreme Court's opinion points out, the Commission denied Hall a waiver which would have permitted collection back to 1961. That issue is before the Fifth Circuit. If the Commission is reversed on that issue, damages back to 1961 may in any event be precluded by the Commission's ceiling.*" (Emphasis added)

In light of this Court's decision in *Arkla v. Hall* on July 2,

1981, the Hall group continued to undergo protracted Federal appellate review proceedings in order to have the District of Columbia Circuit and the Fifth Circuit consistently grant them the *same* Federal administrative relief and the *same* equal justice that this Court indicated was necessary and that the F.P.C., the F.E.R.C. and the Federal courts of Appeals have heretofore consistently and properly granted to scores of other citizens of this Nation in scores of other *"good cause"* for *"waiver"* and *"small producer"* cases with respect to properly granting them legitimate *exemptions* from the identical prospective notice requirements of Section 4(d) of the NGA and Section 205(d) of the FPA for their contractually authorized prices (but not *"timely"* filed prices) for residue natural gas and electricity that were *below* the Commission's established and approved *"just and reasonable"* area rate ceilings.

Subsequently, the District of Columbia Circuit by consistently adhering to and properly applying well established legal *standards* for *"small producer"* status to the *evidence* in this case definitively recognized and correctly confirmed in an unpublished memorandum opinion dated May 28, 1982 the Hall group's legal entitlement to *"small producer"* status for the entire period after October 1972[13]. Arkla, the definitively confirmed contract violator which had vigorously opposed and self-servingly denied the Hall group's legal entitlement to the administrative status of *"small producers"*, inexplicably failed to even seek a rehearing or file for a writ of certiorari with respect to the District of Columbia Circuit's correct and proper confirmation of the Hall group's legal entitlement to the administrative status of *"small producers"*, which Federal administrative relief consistent with this Court's instructions in its decision of July 2, 1981 in *Arkla v. Hall* properly removed the mechanical *"bar"* of the prospective Section 4(d) notice requirement and its corollary known as the *"filed rate doctrine"* and legally cleared the way

[13] *Arkansas Louisiana Gas Company v. F.E.R.C.*, 679 F. 2d 200 (D.C. Cir. 1982)

for the Hall group to ultimately recover full compensatory damages from Arkla for all of the actual losses and damages Arkla wrongfully inflicted upon them *solely because of* Arkla's *own* definitively confirmed legal fault and continued *"breach"*, *"violation"* and *"abuse"* of the Hall group's legitimate legal and contractual rights for the entire period after October 1972.

Subsequently, the Fifth Circuit on November 26, 1982 (after almost 2 years of appellate review) rendered a judgment[14] with respect to the substantive merits of the Hall group's showing of *"good cause"* for a *"waiver"* of the prospective Section 4(d) notice requirement with respect to their definitively confirmed and contractually authorized prices as prospectively agreed upon and provided for in their 1952 contract with Arkla for the pre-1972 period. By consistently adhering to and properly applying the *same* longstanding and well established legal *standards* for *"good cause"* that were consistently adhered to and properly applied by the F.P.C., the F.E.R.C. and the Federal courts of Appeals in *all* of the scores of other *"good cause"* for *"waiver"* cases[15], to the *evidence* contained in the administrative record for this case, the Fifth Circuit found that the Hall group had *"shown good cause"* for a *"waiver"* of the prospective Section 4(d) notice requirement and *remanded* the case to the F.E.R.C. for another *"filing"* of the Hall group's contractually authorized prices with the F.E.R.C. and the F.E.R.C.'s performance of its *"exclusive"* Section 4(d) *"review function"* with respect to another definitive determination that the Hall group's *"filed"* and contractually authorized prices for their residue natural gas were *below* the Commission's established and approved *"just and reasonable"* area rate ceilings.

Arkla, the definitively confirmed contract violator which in an obvious *"Catch-22"* fashion wrongfully rendered the *"good cause"* for a *"waiver"* proceeding necessary in the first instance by virtue of its *own* definitively confirmed legal fault and continued breach of contract for *14* years, has now petitioned this

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[14] *Frank J. Hall, et al v. F.E.R.C.*, 691 F.2d 1184 (5th Cir. 1982).

[15] See the *"good cause"* for *"waiver"* cases as cited in Footnote 1 on page 2 of this Brief.

Court for a writ of certiorari based upon the bald assertion that Arkla is in no way *"legally responsible"* for the Hall group's *"inability"* to timely comply with the prospective Section 4(d) notice requirement and, therefore, (according to Arkla) the Fifth Circuit improperly determined that in this individual case the Hall group had shown *"a good and valid legal excuse"*, *"a good and sufficient legal reason"* and *"good cause"* for a *"waiver"* of the prospective Section 4(d) notice requirement with respect to their definitively confirmed and contractually authorized prices and improperly *remanded* this case to the F.E.R.C. for the F.E.R.C.'s performance of its *"exclusive"* Section 4(d) *"review function"* with respect to the *"just and reasonableness"* of the Hall group's *"filed"* and contractually authorized prices under their legitimate 1952 supply contract. For the reasons as herein set forth, the Hall group respectfully submits that certiorari should be *denied* in this case.

III.

REASONS WHY CENTIORARI SHOULD BE DENIED

A. THE FIFTH CIRCUIT CONSISTENT WITH THE SAME LONGSTANDING AND WELL ESTABLISHED LEGAL STANDARDS FOR "GOOD CAUSE" AS CONSISTENTLY ADHERED TO AND PROPERLY APPLIED BY THE F.P.C., THE F.E.R.C. AND THE FEDERAL COURTS OF APPEALS IN ALL OF THE OTHER "GOOD CAUSE" FOR "WAIVER" CASES CORRECTLY CONCLUDED THAT BASED UPON THE RECORD EVIDENCE IN THIS CASE THE HALL GROUP HAS SHOWN "A GOOD AND SUFFICIENT LEGAL REASON", "A GOOD AND VALID LEGAL EXCUSE" AND "GOOD CAUSE" FOR A "WAIVER" OF THE PROSPECTIVE NOTICE REQUIREMENT OF SECTION 4(d) OF THE NGA FOR THEIR DEFINITIVELY CONFIRMED AND CONTRACTUALLY AUTHORIZED PRICES AS PROSPECTIVELY AGREED UPON AND PROVIDED FOR IN THEIR LEGITIMATE 1952 CONTRACT WITH ARKLA.

In *all* of the scores of other applicable *"good cause"* for *"waiver"* cases[16], the F.P.C., the F.E.R.C. and the reviewing United States courts of Appeals have consistently and properly found *"good cause"* to exist for *granting* scores of *"waivers"* of the indentical prospective Section 4(d) and Section 205(d) notice requirements to scores of other citizens *when* the citizens seeking this well recognized and longstanding administrative relief *showed* that they had *"a good and valid legal excuse"* or *"a good and sufficient legal reason"*, i.e. *"good cause"*, for their *"inability"* or *"failure"* to timely prepare and prospectively file the notice forms with the Commission setting forth their contractually authorized prices for residue natural gas and electricity which were *below* the Commission's established and approved *"just and reasonable"* area rate ceilings.

As correctly recognized and consistently confirmed by the Fifth Circuit below, the record *evidence* in this case and the *definitive decisions* of *all* the Tribunals[17] that have for 9 years reviewed the evidence conclusively confirm that contrary to Arkla's bald and self-serving assertions in this proceeding the Hall group (through no fault of its own) was effectively *"prevented"* and wrongfully *"precluded"* from timely preparing and prospectively filing the Section 4(d) notice forms setting forth their severable and contractually authorized prices with the F.P.C. for the pre-1972 period *solely because* Arkla, as their defaulting contractual obligor, unbeknown to them continuously *"breached"*, *"violated"* and *"abused"* their legitimate

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[16]See the *"good cause"* for *"waiver"* cases as cited in Footnote 1 on page 2 of this Brief.

[17]During the past *9 years, the Louisiana trial court, the Louisiana court of appeal, the Louisiana Supreme court, the F.E.R.C., the United States Supreme Court and the Fifth Circuit court of Appeals have unanimously and consistently confirmed that Arkla's own* legal fault and continued breach of contract from 1961 to 1975 was *"the sole cause"* and *"the only reason"* for the Hall group's absolute *"inability"* to timely and prospectively comply with the Section 4(d) notice requirement with respect to their contractually authorized prices. Pertinent excerpts from the numerous and consistent decisions of these Tribunals on this specific legal point of *"good cause"* are set forth and reproduced in an Appendix B to this Brief for this Court's ready reference and convenience.

legal and contractual rights from September 1961 through December 1975 and effectively withheld *all* of the true, relevant and material facts concerning its continued discrimination and breach of contract from the Hall group for *14* years. Moreover, as correctly and consistently confirmed by the Fifth Circuit below in light of well established legal *standards* for *"good cause"*, Arkla's *"own actions"* involving Arkla's *own* definitively confirmed breach of contract for *14* years and Arkla's *own* uncooperative withholding of all of the true, relevant and material facts from the Hall group for *14* years clearly constitute *"a good and sufficient legal reason"*, *"a good and valid legal excuse"* and *"good cause"* for the Hall group's absolute *"inability"* to timely comply with the prospective Section 4(d) notice requirement with respect to their definitively confirmed and contractually authorized prices as prospectively agreed to and provided for in their legitimate 1952 supply contract with Arkla.

Therefore, in light of fundamental principles of law and basic justice[18] and the *same* legal *standards* for and *showings of "good cause"* as consistently recognized, accepted and adhered to by the F.P.C., the F.E.R.C. and the reviewing Federal courts of Appeals in *all* of the scores of other *"good cause"* for *"waiver"* cases[19], the Fifth Circuit correctly and consistently concluded that (i) the definitively confirmed *"true intentions" and "integrity"* of the legitimate Hall-Arkla supply contract; (ii) Arkla's *own* definitively confirmed legal fault and continuing *"breach"*, *"violation"* and *"abuse"* of their legitimate supply contract from September 1961 through December 1975; and (iii) Arkla's *own*

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[18]It is a fundamental principle of law and justice that:

> *"The conduct of one party to a contract which prevents the other from performing his part is an excuse of non-performance and it is a sound principle that he who prevents a thing being done shall not avail himself of the non-performance he has occasioned."*

See: *United States v. Peck*, 102 U.S. 64 (1880); *R.H. Stearns Co. v. United States*, 291 U.S. 54 (1934); *Ballard v. El Dorado Tire Co.*, 512 F.2d 901 (5th Cir. 1975); *Ammerman v. Miller*, 488 F.2d 1285 (D.C. 1973); and *Gulf Oil Corporation v. American Louisiana Pipe Line Co.*, 282 F.2d 401 (6th Cir. 1960).

[19]See the *"good cause"* for *"waiver"* cases cited in Footnote 1 on page 2 of this Brief.

definitively confirmed failure to disclose and effective withholding of all of the true, relevant and material facts concerning Arkla's *own* continued discrimination and breach of contract from the Hall group for *14* years constitute *"a good and sufficient legal reason"*, *"a good and valid legal excuse"* and *"good cause"* for a *"waiver"* of the prospective Section 4(d) notice requirement with respect to their definitively confirmed and contractually authorized prices. Again, a careful reading of *all* of the other applicable *"good cause"* for *"waiver"* cases[20] and a careful analysis of each one of the accepted *showings* of *"good cause" for* granting *"waivers"* of the indentical prospective notice requirements to the scores of citizens in those cases will fully confirm and underscore the consistency and correctness of the Fifth Circuit's determination that based upon the *evidence* in this individual case the Hall group has *"shown good cause"* for a *"waiver"* of the identical prospective notice requirement with respect to their definitively confirmed and contractually authorized prices as prospectively agreed to and provided for in their legitimate 1952 supply contract with Arkla.

B. THE FIFTH CIRCUIT CONSISTENT WITH ALL OF THE OTHER "GOOD CAUSE" FOR "WAIVER" CASES PROPERLY REMANDED THIS CASE TO THE F.E.R.C. FOR ANOTHER "FILING" OF THE HALL GROUP'S DEFINITIVELY CONFIRMED AND CONTRACTUALLY AUTHORIZED PRICES WITH THE F.E.R.C. AND THE F.E.R.C.'S PERFORMANCE OF ITS "EXCLUSIVE" SECTION 4(d) "REVIEW FUNCTION" WITH RESPECT TO THE "JUST AND REASONABLENESS" OF THE HALL GROUP'S "FILED" AND CONTRACTUALLY AUTHORIZED PRICES FOR THEIR RESIDUE NATURAL GAS.

A comprehensive review of *all* of the *available* F.P.C., F.E.R.C. and the Federal courts of Appeals' *"good cause"* for

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[20]See the *"good cause"* for *"waiver"* cases as cited in Footnote 1 on page 2 of this Brief.

"waiver" cases[21] will further reveal and confrim that heretofore in a manner consistent with equal protection of the law, equal justice under law and due process of law the F.P.C., the F.E.R.C. and the reviewing Federal courts of Appeals have consistently found *"good cause"* to exist for granting *"waivers"* of the indentical prospective notice requirements to scores of citizens with respect to their contractually authorized prices that were *below* the Commission's established and approved *"just and reasonable"* area ceilings *when* the citizens have objectively met and satisfied the *same* well established and longstanding legal *standards* for *"good cause"*, *except* in two other equally inexplicable and obviously discriminatory instances involving the indentical Section 4(d) prospective notice *"waiver"*applications of Plaquemines Oil & Gas Company and Highland Resources, Inc. with respect to their contractually authorized prices (but not "timely" filed prices) for residue natural gas. In both of these other equally unjust and obviously discriminatory instances, the Commission's equally *arbitrary, capricious* and *discriminatory* "Orders" *denying* that *"good cause"* existed for granting *"waivers"* of the prospective Section 4(d) notice requirement to Plaquemines Oil & Gas Company and Highland Resources, Inc. with respect to their contractually authorized prices (but not *"timely"* filed prices) were in the interest of fundamental due process of law, equal protection of the law and equal justice under law also consistently and properly *reversed* on review by the appropriate Federal courts of Appeals. See: *Plaquemines Oil & Gas Co. v. F.P.C.*, 450 F.2d 1334 (D.C. Cir. 1971) and *Highland Resources, Inc. v. F.P.C.*, 537 F.2d 1336 (5th Cir. 1976).

In each of these *"good cause"* for *"waiver"* cases, just like the instant *"good cause"* for *"waiver"* case, the District of Columbia Circuit and the Fifth Circuit in light of the record *evidence*, established and longstanding *standards* for *"good*

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[21]See the *"good cause"* for *"waiver"* cases as cited in Footnote 1 on page 2 of this Brief. F.E.R.C. employees have advised the Hall group's undersigned counsel that the Commission's pre-1968 *"good cause"* for *"waiver"* decisions could not be located.

cause", due process of law, equal protection of the law and equal justice under law properly ordered that "*waivers*" of the prospective Section 4(d) notice requirement be *granted* to Plaquemines Oil & Gas Company and Highland Resources, Inc. for "*good cause shown*" and properly *remanded* the cases to the Commission for the "*filing*" of their contractually authorized prices with the Commission and the Commission's performance of its "*exclusive*" Section 4(d) "*review function*" with respect to the "*just and reasonableness*" of their contractually authorized prices (but not "*timely*" filed prices) for their residue natural gas.

In the instant case, the Fifth Circuit court of Appeals consistent with fundamental principles of equal protection of the law, equal justice under law, due process of law and specifically the "*good cause*" for "*waiver*" decisions in *Plaquemines Oil & Gas Co. v. F.P.C., supra, Highland Resources, Inc. v. F.P.C., supra*, and *The City of Piqua, Ohio v. F.E.R.C., supra*, also properly found that the Hall group had "*shown good cause*" for a *waiver* of the *identical* Section 4(d) prospective notice provision and properly *remanded* this case to the F.E.R.C. for another "*filing*" of the Hall group's definitively confirmed and contractually authorized prices with the F.E.R.C. and the F.E.R.C.'s second performance of its "*exclusive*" Section 4(d) "*review function*" with respect to the "*just and reasonableness*" of the Hall group's "*filed*" and contractually authorized prices for their residue natural gas. In this regard, the Fifth Circuit consistently observed and correctly concluded that:

> "*Even more fundamental, however, to this court's decision to remand this case to the Commission on the question of the reasonableness of rates, is the statutory scheme of the Natural Gas Act itself . . . In the context of this administrative action, our finding that the Commission should have granted Hall's application for waiver of the notice provisions of § 4(d) does not end the Commission's duty to determine the just and reasonableness of those rates. It is, therefore, necessary that we remand this action to permit the Commission to grant Hall's waiver and to provide Hall with the opportunity to file its rates for Commission review on their reasonableness.*
>
> *. . . the grant of a waiver by the Commission does no*

violence to the filed rate doctrine. The D.C. Circuit addressed this contention in City of Piqua v. F.E.R.C., supra, and we adopt their reasoning: '[The filed rate doctrine provides that a utility] can claim no rate as a legal right that is other than the filed rate . .' This court, in discussing the doctrine, stated: 'The considerations underlying the [filed rate] doctrine . . . are preservation of the agency's primary jurisdiction over reasonableness of rates and the need to insure that regulated companies charge only those rates of which the agency has been made cognizant.' *City of Cleveland v. F.P.C.*, 174 U.S.App. D.C. 1, 10, 525 F.2d 845, 854 (1976). *This purpose is unaffected by the Commission's waiver of the notice requirement upon good cause, thus allowing rate changes, found by the Commission to be just and reasonable, to become effective on the date agreed by the parties.* 610 F.2d at 955 . . .

. . . *neither Gillring nor the Commission's policy against retroactive ratemaking are applicable to the facts of this case.*

. . . *a waiver of § 4(d) notice filing requirements was neither involved nor applicable in Gillring.*

The question in the present case — whether the grant of a waiver to permit parties to effectuate their contractual agreement violates a policy against retroactive ratemaking — was squarely presented to the United States Court of Appeals for the District of Columbia Circuit in City of Piqua, Ohio v. FERC, 610 F. 2d 950 (D.C. Cir. 1979).

. . . *In both cases, the intentions of the parties were the same: the effectuation of new rates to be charged prospectively from a date ascertainable in the contract.*

. . . [The D.C. Circuit in Piqua] *reasoned that it would not constitute retroactive ratemaking, when good cause was shown, for the Commission to give effect to the intent of the parties whose contractually authorized rate schedules called for a rate increase to be effective at a designated time.* The court stated:

> *In this case, two parties agreed on new rate schedules and on the effective date for the new contract. The negotiated rate change was not retroactive; it was prospective from the date of the contract. Filing under section 205(d) allowed the Commission to review the agreement to ensure its reasonableness. Such review*

> *does not, when good cause is shown, however, preclude enforcing the contract provision as of the date specified therein. Moreover, the Commission, in finding the Agreement reasonable, did not retroactively substitute a rate; it merely approved the rate change and effective date agreed upon by the parties.*
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> 610 F.2d at 954-55. *A similar position was espoused by FERC in the administrative proceeding in which it had granted the waiver.* See *Dayton Power & Light Co.*, Docket No. ER77-546, Order Granting Rehearing and Correcting Prior Order (January 18, 1978); Order Denying Rehearing (April 3, 1978).
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> *. . . our decision today promotes each of the policies underlying the Natural Gas Act, particularly § 4. Congress in drafting these provisions sought to preserve the integrity of private contractual arrangements . . . The granting of a waiver by the Commission gives effect and preserves the integrity of the private contractual arrangement entered into by Hall and Arkla. The granting of a waiver, but only for good cause shown, gives credence to the §4 notice filing requirements drafted by Congress. In remanding to the Commission, we acknowledge the authority of the agency to review rates so as to protect consumers from unauthorized, excessive prices. Finally, our decision recognizes the legitimate interests of the Hall group whose showing of good cause entitles them to the waiver of notice filing requirements."* (Emphasis added)

As soon as the F.E.R.C. on *remand* from the Fifth Circuit completes its *"exclusive"* Section 4(d) *"review function"* with respect to the *"just and reasonableness"* of the Hall group's *"filed"* and contractually authorized prices for their residue natural gas, this case will be fully consistent with the legal positions espoused and confirmed by this Court and the Commission in *Permian Basin Area Rate Cases*, 390 U.S. 747, 783 (1968) and the legal positions espoused and confirmed by this Court in *Arkansas Louisiana Gas Company v. Frank J. Hall, et al*, 453 U.S. 571 (1981):

> *". . . [the Commission] may 'for good cause shown,'* 15 USC §717c(d) [15 USCS §717c(d)], *waive the usual requirement of timely filing of an alteration in a rate . . .*
>
> *Except when the Commission permits a waiver*, no

regulated seller of natural gas may collect a rate other than the one filed with the Commission.

[rates for] natural gas are lawful only if they are 'just and reasonable' . . . . . The authority to decide whether the rates are reasonable is vested by Section 4 of the Act solely in the Commission . . .

. . . the Louisiana Supreme Court's award of damages to respondents was necessarily supported by an assumption that the higher rate respondents might have filed with the Commission was reasonable . . . *But under the filed rate doctrine, the Commission alone is empowered to make that judgment, and until it has done so, no rate other than the one on file may be charged."* (Emphasis added)

As also confirmed by Mr. Justice Stevens:

"Thus, these respondents, without either filing the escalated rates or obtaining a waiver of the filing requirement, have no federal right to require Arkla to pay the higher rates. That does not mean, however, that they have no contractual right to require Arkla to do so. Cf. Pan American Petroleum Corp. v. Superior Court, 366 US 656, 662-664, 6 L. Ed. 2d 584, 81 S.Ct. 1303." (Emphasis added)

Certainly, after the Hall group has undergone 9 years of burdensome and protracted litigation before *10* Tribunals in order to definitively prove Arkla's continued *"breach"*, *"violation"* and *"abuse"* of the *"true intentions"* and *"integrity"* of their legitimate 1952 supply contract and to properly obtain from the appropriate Federal Tribunals: (i) its *"small producer"* status; (ii) a *"waiver"* of the prospective Section 4(d) notice requirement for *"good cause shown"*; and (iii) the F.E.R.C.'s performance of its *"exclusive"* Section 4(d) *"review function"* with respect to the *"just and reasonableness"* of their *"filed"* and contractually authorized prices for their residue natural gas, the Hall group will consistent with this Court's July 2, 1981 decision in *Arkla v. Hall* and like *all* of the scores of other *"waiver"* recipients and *"small producers"* have a valid *"federal right"*

and a valid *"contractual right"* to require Arkla[22] and its *own* private stockholders to be fully responsible for the actual losses and damages that Arkla wrongfully inflicted upon the Hall group *solely because of* Arkla's *own* definitively confirmed and continued *"breach"*, *"violation"* and *"abuse"* of the Hall group's legitimate legal and contractual rights.

C. THE DISTRICT OF COLUMBIA CIRCUIT AND THE FIFTH CIRCUIT CONSISTENT WITH FUNDAMENTAL PRINCIPLES OF EQUAL PROTECTION OF THE LAW, EQUAL JUSTICE UNDER LAW AND DUE PROCESS OF LAW PROPERLY REFUSED TO BE INTIMIDATED BY ARKLA'S OWN SELF-SERVING THREATS INTO ARBITRARILY, CAPRICIOUSLY AND DISCRIMINATORILY DENYING THE HALL GROUP THE "SMALL PRODUCER" AND "WAIVER" ADMINISTRATIVE RELIEF TO WHICH THEY ARE LEGALLY AND JUSTLY ENTITLED BASED UPON WELL ESTABLISHED LEGAL STANDARDS, ALL OF THE OTHER "SMALL PRODUCER" AND "GOOD CAUSE" FOR "WAIVER" CASES AND THE EVIDENCE IN THIS CASE.

In that Arkla (the rich, powerful and definitively confirmed contract violator and conglomerate which has amassed over

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[22]As evidenced and confirmed by Arkla's public filings with the Federal Securities and Exchange Commission (S.E.C.), Arkla since it first began breaching and violating the Hall group's legal and contractual rights in September 1961 to the present date has: (i) amassed most of its $1,581,000,000.00 in private corporate assets; (ii) amassed corporate revenues of more than $6,600,000,000.00; (iii) amassed net corporate profits of more than $1,200,000,000.00; and (iv) paid and distributed more than $300,000,000.00 in cash dividends to its private stockholders. Moreover, as additionally confirmed by Arkla's recent public filings with the S.E.C., Arkla during the *"recession year"* of 1982 had: (i) its corporate revenues *increase* from $1,179,100,000.00 a year in 1981 to $1,296,600,000.00 a year in 1982; (ii) its net corporate profits *increase* from $152,300,000.00 a year in 1981 to $161,900,000.00 a year in 1982; and (iii) the annual cash dividends paid and distributed to its private stockholders *increase* from $37,000,000.00 a year in 1981 to $43,000,000.00 a year in 1982. Also, as confirmed by Arkla's public filings with the S.E.C., Arkla's payment for all of the losses and damages that it wrongfully inflicted upon the Hall group would *not "materially"* or *"significantly"* affect Arkla's abundant corporate earnings, its net corporate profits or the cash dividend payments to its private stockholders. See, Appendix E.

$1,581,000,000.00 in private corporate assets) and its private stockholders (who now receive *over* $43,000,000.00 a year in cash dividends from Arkla) have *no* corporate conscience about the actual losses and damages that Arkla has wrongfully inflicted upon the Hall group and for purely self-serving reasons do not wish for Arkla to be corporately liable and legally responsible for the actual losses and damages that Arkla wrongfully inflicted upon the Hall group by virtue of Arkla's *own* definitively proven and confirmed *"breach"*, *"violation"* and *"abuse"* of the Hall group's legitimate legal rights for *14* years, Arkla self-servingly demanded that the District of Columbia Circuit and the Fifth Circuit unjustly *ignore* the *evidence* contained in the record of this case, inconsistently *disregard* all applicable legal *standards* and all of the other *"small producer"* and *"good cause"* for *"waiver"* cases and thereby *arbitrarily, capriciously* and *discriminatorily* deny the Hall group the administrative status of *"small producers"* and the *"good cause"* for a *"waiver"* relief to which they are legally and justly entitled. The bottom line of Arkla's bald, unabashed and wholly self-serving attempts to intimidate the District of Columbia Circuit and the Fifth Circuit into wrongfully treating the Hall group in an *arbitrary, capricious* and *discriminatory* manner (as opposed to the equal, just and consistent treatment granted to scores of other citizens with respect to the *"true intentions"* and *"integrity"* of their private supply contracts) was based solely upon self-serving threats by Arkla (the rich, powerful and definitively confirmed contract violator) to *subsequently attempt* to pass through to its customers (as opposed to itself and its *own* private stockholders) Arkla's *own* corporate liability and legal responsibility for the actual losses and damages wrongfully inflicted upon the Hall group *solely because of* Arkla's *own* definitively proven *"breach"*, *"violation"* and *"abuse"* of its *own* legitimate legal and contractual obligations to the Hall group.

In a manner fully consistent with equal protection of the law, equal justice under law, due process of law and *all* of the other *"small producer"* and *"good cause"* for *"waiver"* cases, both the District of Columbia Circuit and the Fifth Circuit properly refused to be intimidated by Arkla's obviously self-serving threats

and correctly recognized that Arkla's self-serving threats had nothing whatsoever to do with the *legal merits* as to whether the Hall group had consistent with the scores of other applicable *"small producer"* and *"good cause"* for *"waiver"* cases objectively met and satisfied the well established and longstanding legal *standards* for *"small producer"* status and *"good cause"* for a *"waiver"* of the prospective notice requirement. As correctly and properly recognized by the District of Columbia Circuit and the Fifth Circuit in this case, the Hall group's legal entitlement to *"small producer"* status and a *"waiver"* for *"good cause shown"* does *not* legally depend upon or arbitrarily rise and fall at Arkla's *own* unilateral and self-serving whims as to whether Arkla (the definitively confirmed contract violator) will or will *not* subsequently *attempt* to pass through its *own* corporate liability and legal responsibility for the actual losses and damages that Arkla wrongfully inflicted upon the Hall group to its customers.

Moreover, consistent with this Court's decisions in *F.P.C. v. Tennessee Gas Transmission Company*, 371 U.S. 145 (1962) and *N.A.A.C.P. v. F.P.C.*, 425 U.S. 662 (1976), both the District of Columbia Circuit and the Fifth Circuit properly recognized that contrary to Arkla's purely self-serving threats the F.E.R.C., a Federal court of Appeals *and* this Honorable Court have more than ample legal authority to *"deny"*, *"bar"* and *"preclude"* Arkla and all other pipeline companies from passing through to any of their customers any of their *own* legal liability and corporate responsibility for the losses and damages that they wrongfully inflict upon any citizens of this Nation by virtue of their *own* definitively proven *"breach"*, *violation"* and *"abuse"* of the legitimate legal rights of any citizens of this Nation.

As forcefully confirmed by this Court in *N.A.A.C.P. v. F.P.C., supra*, not even the super rich and powerful pipeline companies are above the law (as Arkla in this proceeding now suggests) and there are numerous and important reasons for *"denying"* and *"barring"* pass throughs to pipeline companies for losses and damages *caused* by their *own "breaching"*, *violating"* and *"abusing"* the legitimate legal rights of innocent, honest, taxpaying and lawabiding citizens of this Nation. As also con-

firmed by this Court in *F.P.C. v. Tennesses Gas Transmission Company, supra*, pipeline companies and their *own* private stockholders (*not* the innocent victims of their *own* legal fault or their customers) should and must ultimately be required to *"shoulder the hazards incident to [their own] actions"* [371 U.S. at 153]. Otherwise, pipeline companies would care less about the losses and damages that they might wrongfully inflict upon innocent and individual citizens by *"breaching"*, *"violating"* and *"abusing"* their legitimate legal rights.

Certainly, *if* the F.E.R.C., a Federal court of Appeals *and* this Honorable Court are in fact subsequently put to a test by Arkla in a subsequent and separate Section 4(e) proceeding, these three Federal Tribunals can and should at that time meaningfully deal with Arkla's self-serving threats and, if necessary, protect *"any relevant public interest"* by *"denying"*, *"barring"* and *"precluding"* any *belated* and *self-serving attempt* by Arkla to pass through any of its *own* corporate liability and legal responsibility for actual losses and damages caused by its *"own actions"* to any of its customers and justly require Arkla (the definitively confirmed contract violator that wrongfully caused the losses and damages in this case) to *"shoulder the hazards incident to [Arkla's own] actions"* out to Arkla's *own* abundant corporate assets and profits. In that Arkla has amassed *over* $1,581,000,000.00 in private corporate assets; Arkla now reaps *over* $1,296,600,000.00 a year in corporate revenues; Arkla now reaps *over* $161,900,000.00 a year in net corporate profits; and Arkla now distributes *over* $43,000,000.00 a year in cash dividends to its private stockholders, certainly Arkla has become more than rich enough to be *"solely liable"* and *"legally responsible"*, like *all* other citizens of this Nation, for the actual losses and damages that Arkla itself wrongfully inflicts upon any citizens of this Nation by virtue of its *own "breach"*, *"violation"* and *"abuse"* of their legitimate legal rights.

As Arkla on March 14, 1983 accurately and correctly informed the S.E.C. and the general public in its 1982 Annual Report at page 42:

"5. COMMITMENTS AND CONTINGENCIES

The Company is party to litigation in the normal course of business. Management regularly analyzes current information and, as necessary, provides accruals for probable liabilities on the eventual disposition of these matters. The Company believes that the effect on earnings, if any, from the disposition of these matters would not be significant."

IV.

CONCLUSION

For the reasons as set forth herein, the Hall group respectfully submits that certiorari should be *denied* in this case.

Respectfully submitted,

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June, 1983

APPENDIX

APPENDIX A

SOME OF THE RECENT AND AVAILABLE* "GOOD CAUSE" FOR "WAIVER" CASES CONFIRM THE LONGSTANDING PRACTICE OF THE FEDERAL POWER COMMISSION, THE FEDERAL ENERGY REGULATORY COMMISSION AND THE UNITED STATES COURTS OF APPEALS TO GRANT "WAIVERS" OF THE IDENTICAL PROSPECTIVE NOTICE REQUIREMENTS OF SECTION 4(d) OF THE NATURAL GAS ACT AND SECTION 205(d) OF THE FEDERAL POWER ACT (AND THE COMMISSION'S RELATED REGULATIONS) FOR "GOOD CAUSE SHOWN" IN ORDER TO PROTECT AND PRESERVE THE "TRUE INTENTIONS" AND "INTEGRITY" OF LEGITIMATE NATURAL GAS AND ELECTRIC SUPPLY CONTRACTS.

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1. *December 18, 1980 — American Natural Gas Production Company, et al*, F.E.R.C. Rate Schedule No. 51, et al, "*Waiver Orders*" Issued on December 18, 1980 in pertinent part provided:

> "This order grants a blanket waiver of Section 154.94(h) (2) (iii) of the Commission's regulations with regard to the 30 day filling requirement for all notices of change in rate filed by producers . . . which cover gas subject to Sections 102(d) and 108 of the Natural Gas Policy Act of 1978 (NGPA). The order also accepts for filing and grants waiver with respect to certain notices of change in rate filed by producers relating to the above subject.[1]
>
> . . . .
>
> The producers cite various reasons as grounds for waiver of Section 154.94(h) (2) (iii), among them confusion as to the filing requirements themselves, difficulties in monitoring the large number of determinations, and inadequacies in the noticing procedure for final determinations.
>
> Taking into consideration the difficulties encountered by producers in meeting the 30-day filing period, the Commission finds good cause exists to waive Section 154.94(h) (2) (iii) in order to permit untimely filed notices of change

in rate for sales of gas governed by Sections 102(d) and 108 of the NGPA to become effective on either the date of final determination or the date of initial delivery, whichever is later . . .

The Commission orders:

(A) Waiver of the 30-day filing requirement of Section 154.94(h) (2) (iii) is hereby granted for all notices of change in rate covering gas subject to Sections 102(d) and 108 of the NGPA which were filed, pursuant to a final determination, either prior to the date of issuance of this order or within 60 days thereafter.

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[1]/These producers and their rate schedules are listed in the Appendix.

Docket Nos. SA80-138 and SA80-143, SA80-144 and RI80-15, Rate Schedule No. 51.

APPENDIX

Producer	Rate Schedule No.	Supplement No.
American Natural Gas Production Company	51	1
American Natural Gas Production Company	52	1
Amerada Hess Corporation	68	19
Amoco Production Company	441	19
Amoco Production Company	587	41
Amoco Production Company	611	34
Amoco Production Company	807	1
Amoco Production Company	822	1
ARCO Oil and Gas Company Division of Atlantic Richfield Company	178	28
ARCO Oil and Gas Company Division of Atlantic Richfield Company	180	31
ARCO Oil and Gas Company Division of Atlantic Richfield Company	191	23

Producer	Rate Schedule No.	Supplement No.
ARCO Oil and Gas Company Division of Atlantic Richfield Company	431	56
ARCO Oil and Gas Company Division of Atlantic Richfield Company	532	22
ARCO Oil and Gas Company Division of Atlantic Richfield Company	673	17
ARCO Oil and Gas Company Division of Atlantic Richfield Company	682	23
ARCO Oil and Gas Company Division of Atlantic Richfield Company	705	15
Chevron U.S.A. Inc.	173	1
Champlin Petroleum Company	91	6
Conoco, Inc.	192	15
Conoco, Inc.	242	37
Conoco, Inc.	267	23
Conoco, Inc.	274	38
Conoco, Inc.	277	52
Conoco, Inc.	299	18
Conoco, Inc.	309	21
Conoco, Inc.	334	22
Conoco, Inc.	336	42
Conoco, Inc.	409	39
Consolidated Coal Corporation	1	8
Diamond Shamrock Corporation	13	18
Diamond Shamrock Corporation	57	8
Diamond Shamrock Corporation	96	2
Diamond Shamrock Corporation	99	1
Florida Gas Transmission Company	36	1
General American Oil Company of Texas	115	1
General American Oil Company of Texas	117	1

Producer	Rate Schedule No.	Supplement No.
Gulf Oil Corporation	22	23
Gulf Oil Corporation	92	33
Gulf Oil Corporation	118	33
Gulf Oil Corporation	130	38
Gulf Oil Corporation	244	22
Gulf Oil Corporation	473	14
Gulf Oil Corporation	512	8
Gulf Oil Corporation	513	8
Gulf Oil Corporation	514	8
Gulf Oil Corporation	623	1
Hondo Oil and Gas Company	6	17
J. M. Huber Corporation	93	11
Mesa Petroleum Company	108	1
Mitchell Energy Corporation	19	73
Mobil Oil Company	9	29
Mobil Oil Company	100	22
Mobil Oil Exploration and Producing Southeast, Inc.	78	1
Mobil Oil Exploration and Producing Southeast, Inc.	83	3
Mobil Oil Exploration and Producing Southeast, Inc.	84	1
Mobil Oil Exploration and Producing Southeast, Inc.	85	1
Mobil Oil Exploration and Producing Southeast, Inc.	86	1
Mobil Oil Exploration and Producing Southeast, Inc.	88	2
Mobil Oil Exploration and Producing Southeast, Inc.	89	2
TransOcean Oil, Inc.	21	16
Warren Petroleum Company	28	36
Warren Petroleum Company	64	27

II. *July 9, 1980 — Amoco Production Company, et al,* F.E.R.C. Rate Schedule No. 818, et al, "*Waiver Orders*" Issued on July 9, 1980 in pertinent part provided:

> "This order concerns requests by several producers[1] for waiver of Section 154.94(h) (2) (iii) of the Commission's Regulations . . .
>
> The producers here cite various reasons as grounds for waiver of Section 154.94(h) (2) (iii), among them confusion as to the filing requirements themselves during the initial implementation period, and difficulties in the noticing procedures for final determination . . .
>
> Taking into consideration the difficulties encountered by these producers in meeting the 30-day filing period, the Commission finds that good cause exists to waive Section 154.94(h) (2) (iii) so as to permit the notices of change in rate relating to sales of natural gas governed by Sections 102(d) and 108 of the NGPA for the rate schedules listed on Appendix A to become effective as of the date of initial delivery or the date of the final determination, whichever is later. Some of these producers commenced adjustment proceedings to obtain waiver of Section 154.94(h) (2) (iii). Since we have granted waiver, there is no reason to continue these dockets, and they will be terminated.
>
> *The Commission orders:*
>
> (A) Section 154.94(h) (2) (iii) is waived with regard to notices of change in rate relating to sales of natural gas governed by Sections 102(d) and 108 of the NGPA for the producers listed on Appendix A . . .

---

[1]/See Appendix A.

APPENDIX A

Producer Name	**Rate Schedule No.**
Amoco Production Company	818
ARCO Oil and Gas Company	20, 62, 498, 501, 679, 734, 230, 158
CNG Producing Company	44
Cities Service Company	261, 262, 264, 282, 318, 391

Producer	Rate Schedule No.	Supplement No.
Coastal States Gas Producing Company	39	
Columbia Gas Development Corporation	34	
Energy Reserves Group, Inc.	27	
HNG Fossil Fuels Company	1	
Highland Resources, Inc.	7, 13, 14	
Ladd Petroleum Corporation	30, 31, 36	
Louisiana Land and Exploration Company	23, 26, 28	
Louisiana Land Offshore Exploration Company, Inc.	3, 5, 6, 7	
Marathon Oil Company	57, 138	
Mobil Oil Corporation	15, 27, 112, 199, 210, 212, 249, 257, 281, 314, 361, 377, 446, 499, 503, 520, 540	
Mobil Oil Exploration and Producing Southeast, Inc.	10, 14, 49, 65, 66, 68, 70, 75, 76, 77, 79, 80, 82, 87, 91	
Mobil Producing Texas & New Mexico, Inc.[1/]	82, 83, 154, 155	
Northern Natural Gas Producing Company	2, 25, 27	
Quintana Oil & Gas Corporation	1	
Phillips Petroleum Company	279, 604	
Sohio Petroleum Corporation	2, 3, 36, 47, 51, 63, 100, 110, 133, 137, 148,	
Texas Eastern Exploration Company	14	

1/"Name change from Mobil Oil Corporation is pending. Applicant filed the notices of change under the new name and new rate schedule designations."

III. *September 21, 1979 — The City of Piqua, Ohio v. Federal Energy Regulatory Commission*, 610 F.2d 950 (D.C. Cir. 1979).

A review of this reported *"good cause"* for a *"waiver"* case will confirm that the District of Columbia Circuit consistently with well established standards and the other *"good cause"* for *"waiver"* cases on review *affirmed* the F.E.R.C.'s *granting* of a *"waiver"* of the prospective Section 205(d) notice provision of the Federal Power Act for *"good cause shown"* to Dayton Power & Light Company with respect to its contractually authorized prices (but not *"timely"* filed prices) under a private electric supply contract with The City of Piqua, Ohio. In pertinent part the District of Columbia Circuit correctly confirmed that:

> "Piqua challenges the Commission's assignment of a retroactive date to the rate increases as: (1) unauthorized by statute; (2) prohibited by the policy against retroactive ratemaking; and (3) unsupported by substantial evidence.
>
> Piqua contends that Congress intended section 205(d) to be read narrowly . . .
>
> Piqua argues the Commission's orders and interpretation of section 205(d) violate judicial precedent. According to Piqua, courts have read the Act to prohibit retroactive ratemaking.
>
> As part of its retroactivity argument, Piqua also challenges the waiver as inconsistent with the 'filed rate doctrine' as described in Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246, 251, (1951): '[a utility] can claim no rate as a legal right that is other than the filed rate . . . '
>
> The Commission relies upon section 205(d) of the Act as statutory authority for the Commission to allow the rates to take effect without required advance notice.
>
> The primary purpose of section 205(d) is to notify the Commission of changes in rates and schedules between parties to a utilities contract. United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332, 339-40 (1956).
>
> We must also consider the policies underlying section

205(d). One such policy is to recognize private contractual arrangements between parties to a utility agreement.[11] The Supreme Court, discussing this issue, declared, '[W]e should bear in mind that [the Act] evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts.' United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. at 338. Deference to the parties' contractual arrangements, according to the Court, does not impair the regulatory powers of the Commission. The Commission at any time can conduct hearings on a contract rate and modify it if unreasonable.

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[11] *See Hearings on H.R. 11662 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce, 74th Cong., 2d Sess. 28-29 (1936) (noting private companies' role in setting and effecting rates under earlier proposed version of the Natural Gas Act). See also Papago Tribal Util. Auth. v. FERC, No. 76-1937, slip op. at 22 (D.C. Cir. Aug. 21, 1979) (recognizing 'party-ratemaking' under* §205(d); City of Oglesby v. FERC, No. 76-1585, slip op. at 11 (D.C. Cir. Aug. 21, 1979) (acknowledging the preminent role of the contracting parties' intent in rate-increase disputes).

The Commission's interpretation of section 205(d), authorizing rates without requiring advance notice, for good cause shown, furthers these policies . . . Moreover, the Commission in enforcing the effective date negotiated by Piqua and DP&L, is merely honoring the intent of the parties, rather than abrogating a private rate contract. This result is consistent with the principle that, within the regulatory framework, 'the effective date of the consensual rate hike is a matter committed to agreement by the parties.' City of Kaukauna v. FERC, 581 F.2d at 996.

In this case, two parties agreed on new rate schedules and on the effective date for the new contract. The negotiated rate change was not retroactive; it was prospective from the date of the contract. Filing under section 205(d) al-

lowed the Commission to review the agreement to ensure its reasonableness. Such review does not, when good cause is shown, however preclude enforcing the contract provision as of the date specified therein. Moreover, the Commission, in finding the Agreement reasonable, did not retroactively substitute a rate; it merely approved the rate change and effective date agreed upon by the parties.

As part of its retroactivity argument, Piqua also challenges the waiver as inconsistent with the 'filed rate doctrine' as described in Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246, 251 (1951): '[a utility] can claim no rate as a legal right that is other than the filed rate . . . ' This court, in discussing the doctrine, stated: 'The considerations underlying the [filed rate] doctrine . . . are preservation of the agency's primary jurisdiction over reasonableness of rates and the need to insure that regulated companies charge only those rates of which the agency has been made cognizant.' City of Cleveland v. FPC, 525 F.2d 845, 864 (D.C. Cir. 1976). This purpose is unaffected by the Commission's waiver of the notice requirement upon good cause, thus allowing rate changes, found by the Commission to be just and reasonable, to become effective on the date agreed by the parties.

We have considered the agency's interpretation of section 205(d) in light of the Act's policy and the practical consequences of the proposed construction. We find that section 205(d) statutorily authorizes the Commission's waiver of the prior notice requirement upon a showing of good cause.

The Commission found good cause for waiver of the prior notice requirement. First, the Commission noted that the City Commission's resolution process and continuing negotiations sought by Piqua contributed to DP&L's delay in filing the rate changes for Commission approval prior to the agreed-upon effective date. Second, Piqua explicitly agreed to the May 10 effective date."

IV. *October 10, 1978* — The Federal Energy Regulatory Commission in its "*Original Brief*" as filed with the United States court of Appeals for the District of Columbia Circuit in *The*

City of Piqua, Ohio v. Federal Energy Regulatory Commission, 610 F.2d 950 (D.C. Cir. 1979) correctly confirmed that:

> "Historically, the Commission has from its earliest days construed the virtually identical notice provisions of the Federal Power Act and the Natural Gas Act as permitting an effective date for a rate or service charge that is prior to its filing date, for good cause shown.
>
> The provision for waiver of advance notice, for good cause shown, allows flexibility in the administrative process and prevents inequities from resulting from minor or unavoidable procedural delays . . .
>
> . . . the Commission's construction of Section 205(d) reflects a longstanding practice of permitting waiver of the prior notice requirements for gas and electric rate or service charges for good cause shown . . .
>
> The Commission distinguished the cases on retroactive ratemaking cited by Piqua (R.99-100) and found that they were inapposite in the instant circumstances (R.100).
>
> . . . The Commission found that the intent of the parties and the delay caused by the resolution process constituted good cause to waive its prior notice requirements and make the Interconnection Agreement effective as negotiated by the parties (R.102-103) . . .
>
> The Commission has, since its earliest days, consistently construed the Act as permitting the Commission, for good cause shown, to allow a rate change to become effective prior to the date it is accepted for filing."

V. *June 30, 1978 — Utah Power & Light Company*, F.E.R.C. Docket No. ER78-216, "*Waiver Order*" Issued on June 30, 1978 in pertinent part held that:

> "Utah states that the contract was not filed on a timely basis since negotiations to modify the agreement were underway before the 1977 unit went into service . . .
>
> *The Commission finds:*
>
> (1) Good cause exists to waive 18 CFR §35.3 to permit Utah's submittal to become effective subject to refund as hereinafter ordered . . .

The Commission orders:

(A) Waiver of 18 CFR §35.3 notice requirements pertaining to Utah's February 13, 1978 filing is hereby granted."

VI. *January 18, 1978 — Dayton Power & Light Company*, F.E.R.C. Docket No. ER77-546, "*Waiver Order*" Issued on January 18, 1978 in pertinent part held that:

"Dayton explains that it was precluded from submitting the agreement containing the proposed revised rates earlier than August 5, 1977 because of a statutory procedure in Ohio that Piqua was bound to follow . . .

The contract between Dayton and Piqua was intended to take effect on May 10, 1977, . . . By allowing the proposed rates to take effect as of the date, we are giving effect to the intent of the parties . . . By waiving 18 C.F.R. §35.11 notice requirements and thus preserving the integrity of the contract modification negotiated by the parties, we have declared that the proposed revised rates were the legal rates on file at the Commission as of May 10, 1977, . . . which declaration does not constitute retroactive ratemaking."

VII. *December 9, 1977 — New England Power Company*, F.E.R.C. Docket No. ER78-44, "*Waiver Order*" Issued on December 9, 1977 in pertinent part held that:

"Upon review we find that good cause exists to accept for filing and to waive the Section 35.3 requirements to make effective as requested the Letter Agreement of January 13, 1977; the Unexecuted Amendment of Service Agreement dated January 20, 1977; the revisions to the primary service for resale dated October 28, 1977.

The Commission finds:

(1) Good cause exists to accept for filing NEP's Letter Agreement of January 13, 1977, the amendments to the Service Agreement, and the notice of cancellation of primary service, and to grant waiver of the Commission's notice requirements to make the above filings effective as requested."

VIII. *April 11, 1977 — Electric Energy, Inc.*, F.P.C. Docket No. ER77-176, "*Waiver Order*" Issued on April 11, 1977 in pertinent part held that:

> "With reference to your request for waiver of the notice requirements, good cause has been shown for such action pursuant to the requirements of Section 205(d) of the Federal Power Act and Section 35.11 of the Commission's Regulations thereunder; therefore, the rate schedule shall become effective January 1, 1977."

IX. *April 8, 1977 — Arizona Public Service Company*, F.P.C. Docket No. ER77-188, "*Waiver Order*" Issued on April 8, 1977 in pertinent part held that:

> "With reference to your request for waiver of the notice requirements, good cause has been shown for such action pursuant to the requirements of Section 205(d) of the Federal Power Act and Section 35.11 of the Commission's Regulations thereunder; therefore, the rate schedule shall become effective January 1, 1977."

X. *September 3, 1976 — Highland Resources, Inc. v. F.P.C.*, 537 F.2d 1336 (5th Cir. 1976).

A review of this reported "*good cause*" for a "*waiver*" decision will confirm that consistent with well established standards and the other "*good cause*" for "*waiver*" cases the Fifth Circuit determined that "*good cause*" had been shown for a "*waiver*" of the prospective Section 4(d) notice provision of the Natural Gas Act with respect to Highland Resources, Inc.'s contractually authorized prices (but not "*timely*" filed prices) under a private gas supply contract and, therefore, *reversed* the F.P.C.'s administrative "Order" which had *arbitrarily, capriciously* and *discriminatorily* held that Highland Resources, Inc. had *not* "*shown good cause*" for a "*waiver*" of the prospective Section 4(d) notice requirement under the Natural Gas Act with respect to its contractually authorized prices and *remanded* the case to the Commission for the filing of Highland Resources, Inc.'s contractually authorized prices with the Commission and the Commission's performance of its "*exclusive*" Section 4(d) "*review function*" as to the "*just and reasonableness*" of

Highland Resources, Inc.'s contractually authorized prices (but not "*timely*" filed prices) for its residue natural gas. In pertinent part the Fifth Circuit correctly held that:

> "Highland also challenges the FPC's refusal to waive certain large producer filing requirements which it did not meet while its small producer application was pending. After filing its application in June of 1974, Highland made several new jurisdictional sales and collected its contract rates for existing and new sales. Although large producers are required to file with the FPC before transacting such business, Highland did not do so . . .
>
> Highland's contracts contain clauses which allow it to charge whatever the FPC finds to be the just and reasonable rates for large producers. On October 1, 1974, while Highland's application was pending, the FPC allowed an escalation in price and in December set January 31, 1975, as the filing deadline for large producers to collect such new rates as of June 21, 1974. Since Highland had received no word on its application by January 31, 1975, it did not file.
>
> After receiving its rejection on May 13, 1975, Highland filed the appropriate papers with the Commission on June 11, 1975, and asked that they be given nunc pro tunc effect to June 21, 1974. The FPC, however, refused to do so . . . It found no 'good cause' to accept the filings other than prospectively.
>
> Highland alleges that the Commission bred reliance by its published order and that its refusal to give Highland's filings retroactive effect is wholly arbitrary. We agree and reverse the Commission here . . .
>
> . . . the Commission's refusal to give nunc pro tunc effect to the rate filings of Highland was clearly arbitrary and must be reversed. On remand, the Commission should give Highland's filings of June 11, 1975, retroactive effect.
>
> AFFIRMED IN PART; REVERSED AND REMANDED IN PART WITH INSTRUCTIONS."

XI. *April 6, 1976 — Southern Railway Company v. United States*, 412 F.Supp. 1122, 1147, 1151 (Dist.Ct. For D.C. 1976).

The court in reviewing previous *"good cause"* for *"waiver"* cases correctly noted and confirmed:

> "An agency has 'the equitable power "to regard as being done that which should have been done" by recreating the past, insofar as reasonably possible to reflect compliance with the Act . . . ' Plaquemines Oil & Gas Co. v. FPC, 146 U.S. App. D.C. 287, 290-91 & n. 13, 450 F.2d 1334, 1337-38 & n.13 (1971).
>
> This process of equitable reconstitution of the past would involve a determination of where the equities lie . . . ; Niagara Mohawk Power Co. v. FPC, 126 U.S. App. D.C. 376, 380-83, 379 F.2d 153, 157-60 (1967) (agency has authority to assign effective date earlier than date of the issuance of the license, when project was maintained without license in violation of applicable law, in a discriminating manner that takes into account the willfulness of past noncompliance) . . .
>
> 'The principles of equity are not to be isolated as a special province of the courts. They are rather to be welcomed as reflecting fundamental principles of justice that properly enlighten administrative agencies under law. The courts may not rightly treat administrative agencies as alien intruders poaching on the court's private preserves of justice.' Niagara Mohawk Power Corp. v. FPC., 126 U.S. App. D.C. 376, 383, 379 F.2d 153, 160 (1967)."

XII. *September 28, 1971 — Plaquemines Oil & Gas Co. v. F.P.C.*, 450 F.2d 1334 (D.C. Cir. 1971).

A review of this reported *"good cause"* for a *"waiver"* decision will confirm that the District of Columbia Circuit consistent with well established standards and the other *"good cause"* for *"waiver"* cases determined that *"good cause"* had been shown for a *"waiver"* of the prospective Section 4(d) notice provision of the Natural Gas Act with respect to Plaquemines Oil & Gas Co.'s contractually authorized prices (but not *"timely"* filed prices) under a private gas supply contract and, therefore, *reversed* the F.P.C.'s administrative "Order" which *arbitrarily, capriciously* and *discriminatorily* held that Plaquemines Oil & Gas Co. had *not "shown good cause"* for a *"waiver"* of the

prospective Section 4(d) notice requirement under the Natural Gas Act with respect to its contractually authorized prices and *remanded* the case to the Commission for the filing of Plaquemines Oil & Gas Co.'s contractually authorized prices with the Commission and the Commission's performance of its *"exclusive"* Section 4(d) *"review function"* as to the *"just and reasonableness"* of Plaquemines Oil & Gas Co.'s contractually authorized prices (but not *"timely"* filed prices) for its residue natural gas.

As also confirmed in this *"good cause"* for a *"waiver"* case, the District of Columbia Circuit [450 F.2d at 1339] required the Commission to file a supplemental memorandum, after oral argument, which admitted, revealed and confirmed that the Commission had previous thereto consistently granted *"waivers"* of the *identical* prospective Section 4(d) notice requirement for *"good cause shown"* to scores of other citizens with respect to their contractually authorized prices (but not *"timely"* filed prices) under *36* private supply contracts for the period 1961 through 1965. In pertinent part the District of Columbia Circuit correctly held:

> "On 30 March 1970 the Public Service Commission of the State of New York filed a petition for rehearing alleging inter alia that this decision was legally defective because all increases collected by Plaquemines above the initial (1956) 18 cent price were void ab initio as not made in conformity with the filing requirement of Section 4 (d) of the Natural Gas Act — allegedly an essential prerequisite to the validity of a rate increase.
>
> The question on this appeal is whether the Federal Power Commission, in retroactively applying the Natural Gas Act to sales of the Plaquemines Oil and Gas Company between 1961 and 1966, the years in which the Commission asserted jurisdiction over such sales and in which Plaquemines filed for certification, was justified in flatly requiring Plaquemines to refund all sums derived from a 1964 rate increase without first determining its validity. The Commission simply ruled that since Plaquemines' sales in 1964 were within the jurisdiction of the Commis-

sion and 'a rate change pursuant to a contract escalation provision is forbidden in the absence of compliance with the filing provisions of the act,' the 1964 rate increase was without effect and the sums derived therefrom must be refunded. For reasons that follow we reverse and remand to the Commission ...

III. Equitable Retroactive Application of the Act of Plaquemines

...Likewise, we do not hesitate to apply here the position we took with respect to comparable provisions of the Federal Power Act in Niagara Mohawk Power Corp. v. FPC: that the Commission, in acting upon applications for certification filed some time after Commission jurisdiction was asserted (in this case about five years), has the equitable power 'to regard as being done that which should have been done' by recreating the past, insofar as is reasonably possible, to reflect compliance with the Act...

In this case, however, there appears to have been some confusion on the Commission's part in carrying out its purposes in retroactively applying the Act. Time and again in brief, the Commission reminds us that all it was doing with respect to Plaquemines' jurisdictional sales in the period 1961-1966 was recreating the past to reflect compliance with the Act. And indeed, with respect to sales made by Plaquemines in 1961 when Plaquemines should have filed for certification, the Commission did just that: it found that had Plaquemines filed under section 7 in 1961, the rate charged Tennessee would have been in compliance with the Act and hence no compensatory steps were required.

When it came to the 1964 rate increase, however, the Commission seems to have forgotten its original purpose: reconstructing Plaquemines' jurisdictional sales between 1961 and 1966 to reflect compliance with the Act...

We think that having started out to reconstruct Plaquemines sales to reflect compliance with the Act, the Commission was bound to carry that purpose through in regard to all transactions that would have been the sub-

jects of filings had Plaquemines been complying with the Act in the 1961-1966 period.[15] Thus it was error to reject the 1964 rate increase without first attempting to determine whether the rate rise would have been accepted by the Commission had it been the subject of a post-adjustment filing in 1964.

We are at a loss to understand why this approach was eschewed in this case, particularly in view of evidence in the Commission's Supplemental Memorandum, filed after oral argument, showing that this course was followed in retroactively applying the Act to all 36 other restricted-use contracts over which jurisdiction of the Commission was extended in Lo-Vaca. No gas company involved in such contracts filed for certification until after the Supreme Court decision in 1965, and each restricted-use contract contained escalation clauses providing for rate increases between 1961 and 1965. Yet not one other gas company, through identically situated to Plaquemines, was required to refund sums resulting from such rate increases on the mere ground that they were not filed in accordance with section 4(d) of the Act.

---

[15]...This approach smacks of the vindication of statutory duties rather than the reasoned retroactive application of a statute such as we approved in Niagara Mohawk. We have not heard the Commission to argue that its purpose was the former instead of the latter. Indeed, see n. 13, supra, we have been assured by the Commission that it merely seeks the latter. This being so, we think the Commission should, consistent with its purpose, have considered Plaquemines' 1964 rate rise to see if the Commission would have approved its 1964 certificate application seeking approval of the price as in-line with the prices then prevailing."

XIII. *September 10, 1969 — Southern California Edison Company, "Waiver Order"* Issued on September 10, 1969 in pertinent part held that:

> "With regard to your request for a retroactive date of May 22, 1969 to coincide with the in-service date of the Four Corners-Eldorado transmission line, the Commission has found that good cause for granting waiver of the 30-day prior notice requirement has been shown pursuant to Section 205 (d) of the Federal Power Act and Section 35.11 of the Commission's Regulations thereunder. Accordingly, the Commission has provided that the rate schedules as designated in the Attachment be made effective as of that date."

XIV. *September 4, 1969 — Consumers Power Company,* F.P.C. Rate Schedule No. 15, *"Waiver Order"* Issued on September 4, 1969 in pertinent part held that:

> "With reference to your request for waiver of the notice requirements, the Commission has found that good cause has been shown for such action pursuant to the requirements of Section 205 (d) of the Federal Power Act and Section 35.11 of the Commission's Regulations thereunder and has provided that the above rate schedule supplement shall be made effective April 2, 1969 (as requested), and designated as follows:
>
> Consumers Power Company
> Supplement No. 1 to
> Rate Schedule FPC No. 15"

XV. *November 6, 1968 — Iowa Power & Light Company,* F.P.C. Rate Schedule No. 33, *"Waiver Order"* Issued on November 6, 1968 in pertinent part held that:

> "Your company has requested waiver of the 30-day notice requirement to permit the agreement to become effective as of October 2, 1968. The Commission has found that good cause for granting the requested waiver has been shown pursuant to the requirements of Section 35.11 of the Regulations under the Federal Power Act. The Commission has therefore waived the 30-day notice requirement and has assigned an effective date of October 2, 1968 to the above-designated filing.

XVI. *May 18, 1967 — Niagara Mohawk Power Corp. v. F.P.C.*, 379 F.2d 153, 160 (D.C. Cir. 1967).

The District of Columbia Circuit correctly noted and confirmed in pertnent part that:

> "Courts and agencies properly take cognizance of one another as sharing responsibility for achieving the necessities of control in an increasingly complex society without sacrifice of fundamental principles of fairness and justice.[24] ...It is indeed a 'familiar principle of equity ... to regard as being done that which should have been done.'

---

[24] See note 23, supra; Braniff Airways, Inc. v. CAB, ____ U.S. App. D.C. ____, 379 F.2d 453 (No. 20160, April 12, 1967); L. Jaffe, *Judicial Control of Administrative Action* vii (1965) (central thesis that 'courts and agencies are in a *partnership* of lawmaking and law applying'); NLRB v. Warren Co., 350 U.S. 107, 112, 76 S.Ct. 185, 100 L.Ed. 96 (1955).

XVII. *May 18, 1965 — Central Main Power Company v. F.P.C.*, 345 F.2d 875, 876 (1st Cir. 1965).

The First Circuit correctly noted and confirmed in pertinent part that:

> "... it is neither discriminatory nor a true penalty for the Commission to treat petitioner in the terms of its license as it would have treated it (see n. 1, supra) had it complied with the statute when it should have. It is a familiar principle of equity itself to regard as being done that which should have been done."

*F.E.R.C. employees have advised the Hall group's counsel that the Commission's pre-1968 "*good cause*" for "*waiver*" decisions could not be located.

APPENDIX B

THE CONSISTENT AND DEFINITIVE DECISIONS OF THE LOUISIANA TRIAL COURT, THE LOUISIANA COURT OF APPEAL, THE LOUISIANA SUPREME COURT, THE FEDERAL ENERGY REGULATORY COMMISSION, THE UNITED STATES SUPREME COURT AND THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT CONCLUSIVELY CONFIRMED THAT ARKLA'S CONTINUED "BREACH", "VIOLATION" AND "ABUSE" OF THE HALL GROUP'S LEGITIMATE LEGAL AND CONTRACTUAL RIGHTS FROM 1961 TO 1975 WAS "THE SOLE CAUSE" AND "THE ONLY REASON" FOR THE HALL GROUP'S ABSOLUTE "INABILITY" TO TIMELY COMPLY WITH THE PROSPECTIVE SECTION 4(d) NOTICE REQUIREMENT FOR THE PRE-1972 PERIOD WITH RESPECT TO THEIR CONTRACTUALLY AUTHORIZED PRICES THAT WERE PROSPECTIVELY AGREED TO AND PROVIDED FOR IN THEIR LEGITIMATE 1952 SUPPLY CONTRACT WITH ARKLA.

I. *March 5, 1979* — The Louisiana Supreme court in *Frank J. Hall, et al v. Arkansas Louisiana Gas Company*, 368 So.2d 984 (La. 1979) in pertinent part confirmed that:

> "The trial court ... held that defendant [Arkla] breached the original gas purchase contract, ... [and] that defendant would only be liable for damages ...
>
> The court of appeal affirmed the trial court, holding that defendant [Arkla] had breached the favored nations clause of its contract with plaintiffs and that the plaintiffs were entitled to damages ...
>
> ...Article 2040, properly interpreted, means that the condition is considered fulfilled, when it is the debtor, bound under that condition, who prevents the fulfillment ... This rule is but an application of the long established principles of law that he who prevents a thing may not avail himself of the non-performance he has occasioned and that one should not be able to take advantage of his own wrongful act ...

> To realize this higher, contractually-authorized price, plaintiffs, pursuant to the Natural Gas Act, were required to file new rate schedules with the Commission. However, plaintiffs were effectively precluded from making the requisite filings because they were not, at any time, informed by defendant that it was, in fact, paying a higher price to another party seller. Although defendant was only bound to pay plaintiffs a higher price if plaintiffs filed new rate schedules with the Commission, it is apparent that defendant prevented the fulfillment of that condition (plaintiffs filing with the Commission) by failing to inform plaintiffs of its contractual arrangements with the United States Government."

II. *November 5, 1980* — The F.E.R.C. in *Arkansas Louisiana Gas Company v. Frank J. Hall, et al.* F.E.R.C. Docket No. RI76-28, "Order" issued November 5, 1980, in pertinent part confirmed that:

> "We recognize the determination of the Louisiana courts that the Hall group did not file for a rate increase in 1961 because Arkla withheld from the Hall group information that the Louisiana courts found Arkla was required to give the Hall group, and we realize that as between the Hall group and Arkla, the equities are favorable to the Hall group."

III. *July 2, 1981* — The United States Supreme Court in *Arkansas Louisiana Gas Company v. Frank J. Hall, et al.* 453 U.S. 571 (1981) in pertinent part confirmed that:

> "Arkla seeks to have this Court determine, as a matter of law, whether it actually breached its contract with respondents. This we decline to do. We see no reason to disagree with the Commission's judgment that interpretation of the favored nations clause raises only questions of state law. The state court found that the contract had been breached. We will not overturn the construction of Louisiana law by the highest court of that state ...
>
> The courts below found that Arkla has done no more than commit a simple breach of its contract ...

> ... The court reasoned that Arkla's failure to inform respondents of the lease payments to the United States had prevented respondents from filing rate increases with the Commission ...
>
> ... In all respects other than those relating to damages, the judgment of the Supreme Court of Louisiana is affirmed."

With respect to this *same* legal point, Mr. Justice Powell in his dissenting Opinion also expressly confirmed that:

> "By virtue of the 'most favored nation' clause in its contract with respondents, petitioner was obligated to pay respondents the higher rate it paid a comparable supplier. Petitioner did not comply with this provision, ...
>
> ... [t]he Louisiana courts found that petitioner was responsible for respondents' failure to file.
>
> Petitioner did not disclose that it was paying higher rates to another producer from the same field under comparable conditions. The Louisiana Court of Appeals expressly found that respondents' failure to comply with the filed rate doctrine was caused primarily by the 'uncooperative and evasive' conduct of petitioner's officials. See, 359 So.2d 255, 264 (1978). Petitioner knew the facts, and the Louisiana Supreme Court held that petitioner had a state-law duty to disclose them in order not to frustrate the 'most favored nation' clause. There is no showing that respondents had any knowledge of their entitlement to invoke the clause until they finally obtained the facts through the Freedom of Information Act."

With respect to this *same* legal point, Mr. Justice Stevens in his dissenting Opinion (as joined by Mr. Justice Rehnquist) also further confirmed that:

> "...By contract with respondents, Arkla was obligated to pay them a price at least as high as it paid for other gas produced from any well located in the Sligo Field. See ante, at 2, n.2. In fact, however, it paid respondents only about two-thirds of the price paid to the United States.

> Arkla did not disclose the price differential to respondents. The Louisiana Court of Appeal found that, in response to inquiries from respondents about the arrangement with the United States, 'the officials of Arkla were uncooperative and evasive.' 359 So.2d 255, 264 (1978). That court characterized Arkla's nondisclosure and evasiveness as 'not commendable,' ... It is clear, however, that Arkla's failure to disclose to respondents its discriminatory payments to another supplier in the same gas field constituted a breach of contract ...
>
> ... there can be no doubt about Arkla's contractual duty to disclose the differential even though the Louisiana Supreme Court had no occasion to comment on this specific obligation other than by noting the applicability of the principle 'that one should not be able to take advantage of his own wrongful act.' 368 So.2d at 990 ...
>
> ... In this case, the court squarely held that respondents had been effectively precluded from making the necessary filings by Arkla's failure to inform them of its contractual arrangement with the United States ...
>
> Summarizing the effect of the state court's rulings, these propositions must be taken as having been established; (1) Arkla breached its contract with respondents; (2) Arkla is responsible for respondents' failure to file new rate schedules with the Commission ...
>
> ... Nothing other than Arkla's proven wrong-doing provides any explanation for its discrimination against respondents."

IV. *November 26, 1982* — The Fifth Circuit court of Appeals in *Frank J. Hall, et al v. F.E.R.C.*, 691 F.2d 1184 (5th Cir. 1982) in pertinent part confirmed that:

> "It is now also established that the parties intended the favored nations clause in their contract to cover the present situation thereby permitting the Hall group (had they filed) to recover from Arkla the equivalent of the rates it paid the United States beginning in September 1961 ...

[The Hall group] is entitled to the rates which it contracted with Arkla to receive over which the Commission has authority to regulate. The only reason Hall has not received these rates is that [Hall] failed to administratively file for them with the Commission because Arkla did not inform them of the higher payments it was making to the United States ...

... [t] he delay, particularly the length of the delay, was the result of Arkla's own, albeit non-fraudulent, actions ...

In granting Hall's waiver, the Commission could promote the purposes of the Act and preclude Arkla from breaching its contract by delaying Hall's notice filing and using the length of the delay to defeat Hall's application."

APPENDIX C.

ARKLA'S CONTRACTS WITH THE UNITED STATES GOVERNMENT

I. Arkla's 1961 Protective Lease Contract with the Unite States Government in pertinent part provided:

> "Section 2(n) - Lessee agrees: If owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil or gas derived from lands under this lease, to accept and convey and, if a purchaser of such such products, to purchase at reasonable rates and without discrimination the oil or gas of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing or selling oil, gas, natural gasoline, or other products obtained under a lease or permit granted by the United States."

II. Arkla's 1962 Letter Agreement with the United States Government provided:

"ARKANSAS LOUISIANA GAS COMPANY
Shreveport, Louisiana
November 15, 1962

Mr. J.R. Reeve, Regional Oil and Gas Supervisor,
United States Geological Survey,
521 Wright Building,
115 West 3rd Street,
Tulsa 3, Oklahoma.

In re: Oil and Gas Lease BLM-A-054491,
Sligo Field, Louisiana, Parcel No. 3

Dear Sir:

This refers to your letter to Natural Gas and Oil Company of October 12, 1962 and conference between the undersigned and you in your office in Tulsa on October 19th.

By your letter of March 27, 1962 you determined prices, so far as concerns the Government's royalty gas of $0.117432 per mcf until January 1, 1962; $0.130252 until January 1, 1967 and thereafter $0.140508 at a pressure base of 15.025 p.s.i.a. In view of the Government's right under the lease contract to determine the value of its royalty gas but without conceding that the above figures represent market value in the Sligo Field, we have decided that we should accede to the determination and have initiated the proper procedures in our organization to see that accounting and payment is made for Arkansas Louisiana Gas Company's share of the gas at the above figures.

Very truly yours,
/s/J.C. TEMPLETON
J.C. Templeton
Vice President

cc: Washington 11/21/62
cc: Murphy Corporation
Union Producing Company
Texas Gas Exploration Corporation
Natural Gas and Oil Company"

APPENDIX D.

SOME OF ARKLA'S "OTHER" INTERNAL MEMORANDUMS CONFIRM THAT SOME OF ARKLA'S OFFICERS AND OFFICIALS WERE FOR GOOD REASON VERY CONCERNED ABOUT THE LIKELIHOOD THAT ARKLA'S CONTRACT WITH THE UNITED STATES GOVERNMENT WOULD "BREACH", "ACTIVATE" AND "TRIGGER" ARKLA'S LEGITIMATE LEGAL AND CONTRACTUAL OBLIGATIONS TO THE HALL GROUP UNDER THEIR 1952 MOST FAVORED NATION" CONTRACT AND THAT THE TRUE FACTS CONCERNING ARKLA'S CONTRACTS WITH THE UNITED STATES GOVERNMENT HAD NOT BEEN DISCLOSED BY ARKLA TO THE HALL GROUP.

I. *November 20, 1961:*

"ARKANSAS LOUISIANA GAS COMPANY
INTERNAL CORRESPONDENCE

Dated at Shreveport, Louisiana
November 20, 1961

TO:Mr. J.C. Templeton
FROM:B.E. Harrell
SUBJECT:U.S.A. Lease — Sligo

RECEIVED
NOV. 20, 1961
J.C. Templeton

In answer to your letter of November 17, 1961, concerning royalty price applicable to the above lease, this is to advise that I have no particular opinion as to what price should be paid to the royalty owners by ALG in this field. However, I do wish to caution you that we have a favored nations contract with W.E. Hall et al in this field and the price they are receiving is presently $0.08797 per MCF. I do not know whether our paying any royalty owner a higher price than $0.08797 would activate this favored nations clause; however, if the attorneys feel that there is no danger of a royalty price activating a favored nations clause, then I have no objection to paying the Government at a price substantially higher than $0.08797.

I wanted to bring this out, however, since any activation of favored nations clauses in this area would cost ALG several million dollars in increase in cost of gas annually.

/s/ BILL

BEH:dm
cc: Mr. D.W. Weir
Mr. Robert Roberts, Jr."

II. *December 27, 1961:*

"ARKANSAS LOUISIANA GAS COMPANY
INTERNAL CORRESPONDENCE

Dated at December 27, 1961

TO: Mr. John W. Denhollem

FROM: Robert Roberts, Jr.

SUBJECT: Operating Agreement — Barksdale Field Lease,
Sligo Area, Bossier Parish, Louisiana.

This is in response to your memorandum of December 18, 1961, requesting my comment on recent correspondence concerning the effort to agree on a balancing provision (Section 3) for the Operating Agreement of February 1, 1961.

After our telephone conversation yesterday I find that in my file is a copy of the amendment submitted by Mississippi River Fuel Corporation with their letter of June 14, 1961. Shortly afterward I commented on Mississippi River's draft and send you herewith a copy of my memorandum to you of July 25th in that connection. I do not know that there is anything that I can add to the comments I made in that letter.

Texas Gas' letter of December 13th emphasizes the difficulty of the problem and the difference in point of view of the various parties: You do not want to buy any gas or set a price, and obviously several of the parties want to do just that.

As requested, your file is returned herewith.
Very truly yours,

/s/ROBERT ROBERTS JR.

Encs-
RRJr:m

cc - Messrs. J.C. Templeton
M.C. Bubenzer
J.O. Cooke, Jr."

III. *October 10, 1962:*
"UNITED STATES GOVERNMENT
MEMORANDUM

TO: Files DATE: 10-22-62

FROM: N. Orvis Frederick

SUBJECT: BLM-A-054491, Sligo Field, Louisiana

J.C. Templeton, Vice President, Arkansas Louisiana Gas Company, Shreveport, came in at 9:30 on Friday, October 19, 1962, to discuss the $34,723.45 deficit (as of 8-1-62) in royalty payments, mostly due to their 8.547¢ per MCF value placed on gas taken in kind being below reasonable value and below all sales from the same lease by their co-lessees.

Mr. Templeton is aware of the higher prices being paid for 85% of the gas from this lease, but maintained Ark-La is buying a great deal of gas from other producers in the field at the 8.5¢ plus/MCF price by 1952 contracts (referred to in his letter to us dated 4-13-62); feared the other producers would be dissatisfied if Ark-La paid us more; and suggested a negotiated price. He was advised that these were unacceptable; that royalty would continue to be computed on the Union Producing Company price (our letter of 3-27-62) and in accordance with the lease instrument and regulations; and that Ark-La had the right of appeal.

He expressed little interest in an appeal but wished to have time to consult their attorney, who will be back from vacation in about a week, and then present the matter to the Company board (?), and that we would hear further from him in 10 to 14 days. It seemed most likely that Ark-La will agree to recalculate their royalty payments in agreement with our royalty statements.

/s/ N. ORVIS FREDERICK
N. Orvis Frederick

Copy to Shreveport
NOF:ec"

IV. *November 6, 1962:*

"ARKANSAS LOUISIANA GAS COMPANY

Shreveport, Louisiana

Mr. Robert Roberts, Jr. November 6, 1962

J.C. Templeton

Sligo Royalty Price

The Advisory Council (sic) approved my recommendation that ALG increase its royalty price to that requested in the U.S. Geological Survey letter of March 27, 1962. Please prepare a letter advising the U.S.G.S. which will protect us legally. Copies should be sent to all of the partners owning an interest in the lease.

JCT:mo

cc: Mr. J. G. Cooke, Jr."

V. *November 15, 1962:*

"ARKANSAS LOUISIANA GAS COMPANY
Shreveport, Louisiana
November 15, 1962

Mr. J. R. Reeve, Regional Oil and Gas Supervisor,
United States Geological Survey,
521 Wright Building,
115 West 3rd Street,
Tulsa 3, Oklahoma.

In re: Oil and Gas Lease BLM-A-054491,
Sligo Field, Louisiana, Parcel No. 3

Dear Sir:

This refers to your letter to Natural Gas and Oil Company of October 12, 1962 and conference between the undersigned and you in your office in Tulsa on October 19th.

By your letter of March 27, 1962 you determined prices, so far as concerns the Government's royalty gas of $0.117432 per mcf until January 1, 1962; $0.130252 until January 1, 1967 and thereafter $0.140508 at a pressure base of 15.025 p.s.i.a. In view of the Government's right under the lease contract to determine the value of its royalty gas but without conceding that the above figures represent market value in the Sligo Field, we have decided that we should accede to the determination and have initiated the proper procedures in our organization to see that accounting and payment is made for Arkansas Louisiana Gas Company's share of the gas at the above figures.

Very truly yours,
/s J.C. TEMPLETON
J.C. Templeton
Vice President

cc: Washington 11/21/62
Murphy Corporation
Union Producing Company
Texas Gas Exploration Corporation
Natural Gas and Oil Company"

VI. *January 15, 1974:*

"ARKANSAS LOUISIANA GAS COMPANY
INTERNAL CORRESPONDENCE

DATED AT Shreveport, Louisiana

TO: Mr. G. L. Hetherwick January 15, 1974

FROM: Jim Monk

SUBJECT: D. B. McConnell, et at — Sligo Field, Louisiana

Enclosed is a copy of a letter dated January 11, 1974, concerning prices paid from the above referenced field. Please draft a reply to this letter stating that we have not exceeded the price stated in the contract. Therefore, the "Favored Nations" part of this contract has not been activated. I have enclosed the permanent file for your reference.

JMM: jj
Enclosures"

VII. *January 17, 1974:*

"ARKANSAS LOUISIANA GAS COMPANY
INTERNAL CORRESPONDENCE

DATED AT Shreveport, Louisiana
January 17, 1974

TO: Mr. Jim Monk

FROM: Gilbert L. Hetherwick

SUBJECT: D. B. McConnell, et. al Sligo Field, Louisiana

Attached is a draft of a letter responding to Will Hall's letter of January 11, 1974, in accordance with your request of January 15, 1974.

I drafted this response like you requested to simply state that we are not paying a higher price than the price in his contract. However, that is not what he asked for. He asked for specific information concerning all contracts in the Sligo Field and particularly information concerning the price we are paying the United States Government (see page 2 of his letter).

I assume from your request that you meant to deliberately not give him what he had asked for. However, I would point out that Will Hall is a lawyer and our response looks like we may be putting him off. All he has to do is draft a petition and file it in order to sue us and then he can subpoena all the contracts he wants information about. This would be troublesome and probably expensive for Arkla and I would suggest that you would consider giving him more specifically the information he asks for unless there is some reason not to.

Your file is returned herewith.

Very truly yours,

/s/ G.L.H.

GLH/fm
Attachments."

APPENDIX E.

ARKLA'S PUBLIC FILINGS WITH THE FEDERAL SECURITIES AND EXCHANGE COMMISSION CONFIRM ARKLA'S TRUE POSITIONS WITH RESPECT TO ITS LEGAL LIABILITY TO THE HALL GROUP AND THE FACT THAT ARKLA'S PAYMENT OF DAMAGES TO THE HALL GROUP FOR THEIR ACTUAL LOSSES WILL NOT "MATERIALLY" OR "SIGNIFICANTLY" AFFECT ARKLA'S ABUNDANT CORPORATE ASSETS, ARKLA'S ABUNDANT CORPORATE EARNINGS, ARKLA'S ABUNDANT CORPORATE PROFITS AND THE ABUNDANT CASH DIVIDENDS THAT ARKLA PAYS TO ITS PRIVATE STOCKHOLDERS EACH YEAR.

I. *August 19, 1975* — Arkla in a Public Filing with the Federal Securities and Exchange Commission candidly disclosed and correctly confirmed that:

"BLANCHARD, WALKER, O'QUINN & ROBERTS
First National Bank Building
Post Office Drawer 1126
Shreveport, Louisiana 71163
Telephone (318) 221-6858
August 19, 1975

AIR MAIL

Securities and Exchange Commission
Attention: Mr. Blair Corkran
Division of Corporation Finance
Washington, D. C. 20549

RE: Arkansas Louisiana Gas Company,
Registration No. 2-54218, Form S-9

Dear Sirs:

This is in response to telephone conversation on Monday, August 18, yesterday, between Mr. Corkran and the undersigned as attorney for Arkansas Louisiana Gas Company. Mr. Corkran inquired as to whether the pending lawsuit of Frank J. Hall and fourteen other plaintiffs against Arkansas Louisiana Gas Company (the "Company"), No. 225,699 on the docket of the First Judicial District Court of Louisiana within and for the Parish of Caddo, should be described in the preliminary prospectus dated July 21, 1975, a part of the above registration, under the caption "Legal Proceedings" on page 19.

The suit referred to was filed in the First District Court Caddo Parish, in October 1974, by fifteen plaintiffs, against the Company. The plaintiffs brought the suit on a contract between them (or in certain instances their predecessors) with a number of other sellers not party to the suit and the Company for the sale of gas to be produced from certain gas production properties in the Sligo Gas Field, Bossier Parish, Louisiana. The contract was executed in January, 1952, and its term extends into 1980. The suit claimed that the agreed prices under the contract, by reason of payments made by the Company to the Federal Government under an oil and gas lease, beginning in 1961 were increased and had not been properly paid by the Company. The suit asked for a declaratory judgment, an accounting, and unspecified damages in the amount of $1.5 million. The defendent answered the suit denying plaintiffs' version of the agreement and claiming that the prices to the plaintiffs had been properly calculated and paid. After extensive preliminary proceedings, the plaintiffs on June 12, 1975 superseded their original demand with an amended petition on which the action is now pending. The amended petition appears to be for the same demand and on the same legal and factual basis as to the plaintiffs' claim, but instead of asking for an accounting, seeks damages for breach of the contract in an amount of $8,755,000 and cancellation of the contract. The Company believes that it has paid plaintiffs all sums due under the contract and expects to prevail on the principle issue of the suit. In addition, there are a number of other issues, the decision of which will

be material if plaintiffs should prevail on their claim; for example, prescription (limitation), whether the Federal Power Commission has sole jurisdiction over plaintiffs' demand, the effect on the agreement and its interpretation and performance of the Natural Gas Act and the Federal Power Commission's regulations thereunder. It should also be stated that plaintiffs' demand, if they should prevail on their principal claim, is estimated by the Company to be not more than $3,500,000.

The reason this lawsuit was not reported in the prospectus is that, in our opinion, it is not "material" in the sense in which the Commission uses that term in its rules with regard to the preparation of prespectuses. If the entire eight million dollar claim should be considered at issue in the suit, it would affect earnings by additional gas purchase expense with an offset to the extent of 50% by reducing income taxes, and, as we understand the proper accounting, the additional expense would be spread over the fourteen years back to 1961. If the entire amount at risk in the suit should be considered as affecting the year in which a judgment might become final, the risk, $4,377,000, would be barely more than 10% of the net income of the Company for the year ending May 31,1975, as reported in the prospectus, and could be compared also with the income from continuing operations before income taxes (58.60 million dollars), and with the income from continuing operatons (39.24 million dollars). The amount claimed is obviously less than 10% of current assets and less than 5% of total assets — tests of materiality which are mentioned in certain of the Commission's rules. The annual reduction in income would be in the order of $315,000.

We have no objection to describing the lawsuit in the prospectus; but since it is an action of the kind normally experienced in the business in which the Company is engaged, and it appears that a complete loss of the suit would not materially affect the Company or its prospects, we concluded that it should not be described in the prospectus.

We would be glad to have your conclusions on this point.

Very truly yours,
/s/ ROBERT ROBERTS JR.
BLANCHARD, WALKER, O'QUINN & ROBERTS

RRJr/er
cc: Eugene R. Sullivan, Esq.
David G. Ormsby, Esq."

II. *March 14, 1983* — Arkla in its publicly filed 1982 *Annual Report* at pages 3 and 41 candidly disclosed and correctly confirmed that:

"*To Our Stockholders*

In 1982, despite a recession which adversely affected our industrial gas sales and non-gas businesses, Arkla achieved a new record for earnings of $1.90 per common share, an increase of 9% over the $1.74 per share earned in 1981. With the recovery of the economy we look forward to continued progress in 1983.

The year 1982 marked the completion of 'A Decade of Progress' for Arkla since Don Weir took over as Chairman and I became President at the beginning of 1973. It has been my privilege to serve as Chairman and President since January, 1979.

Here are some of the results achieved by Arkla since 1972 in 'A Decade of Progress.'

* Fertilizer and plywood operations were sold in 1974 which disposed of losing businesses at a gain.
* Revenues rose from $227 million to $1,297 million- more than a billion dollar increase.
* Net income increased from $25.0 million to $95.4 million- more than a $70 million increase.
* Earnings per common share increased from $0.50 per share in 1972 to $1.90 per share in 1982.
* Common dividends paid were increased from 26¢ per share in 1972 to 86¢ per share in 1982.
* Arkla stock was listed on the New York Stock Exchange in March 1974.

* Arkla Stock had three stock splits: a 5 for 4 in 1975, a 2 for 1 in 1979, a 2 for 1 in 1981.
* Capital expenditures increased from $29.7 million to $189.0 million.
* Exploration expenditures were increased from $9.7 million to $83.2 million.
* Total capitalization increased from $387.1 million to $956.5 million, an increase of $569.4 million but equity percentage improved from 45.1% to 51.0%.
* The rating of Arkla's first mortgage bonds increased from A to AA.
* Increases in rates and prices for gas sales were pursued regularly.
* New gas reserves acquired exceeded withdrawals from reserves for seven consecutive years 1976 through 1982.
* Arkla's system reserves of 4.9 trillion cubic feet gives Arkla a reserve to withdrawals ratio about 50% better than the industry as a whole.

As Arkla moves into the future it is in an excellent position with a strong current gas supply coupled with one of the lowest costs of purchased gas of all companies in the industry. Arkla has a cost effective operation, an aggressive gas acquisition program, and a sound financial structure. All these make Arkla very competitive in the gas industry.

During 1982, Mr. Robert Roberts, Jr. and Mr. Carl Stout retired as Directors after many years of dedicated and valuable service. We are deeply indebted to each of them for their many contributions and constant support which helped make 'A Decade of Progress' possible. Mr. Herman Taylor, Jr. of Natchitoches, Louisiana and Mr. Jerral W. Jones of Little Rock, Arkansas have been named to fill the vacancies.

A more detailed view of 'A Decade of Progress' is given in the Management Analysis on page 25.

'A Decade of Progress' would not have been possible without the dedicated efforts of Arkla's employees and strong support of its Board of Directors and Stockholders. We are deeply ap-

preciative to all and look forward to another decade of progress together.

/s/ SHEFFIELED NELSON
Sheffield Nelson
Chairman of the Board
and President"

". . . 5 . COMMITMENTS AND CONTINGENCIES

CONTINGENCIES

The Company is party to litigation in the normal course of business. Management regularly analyzes current information and, as necessary, provides accuruals for probable liabilities on the eventual disposition of these matters. The Company believes that the effect on earnings, if any, from the disposition of these matters would not be significant."